Parliamentary Committees

Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015

Report No. 3a, 55th Parliament
Finance and Administration Committee
May 2015

This report has been updated to incorporate Erratum tabled by the Committee on 25 May 2015.

Finance and Administration Committee

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Acknowledgements

The Committee thanks those who briefed the Committee, made submissions, gave evidence and participated in its inquiry. In particular the Committee acknowledges the assistance provided by the Queensland Treasury, Office of Fair and Safe Work Queensland, Department of Housing and Public Works, Department of Energy and Water Supply and Department of Environment and Heritage Protection.

Contents

Abbreviations

CCIQ	Chamber of Commerce and Industry Queensland
CLA	Committee of the Legislative Assembly
COAG	Council of Australian Governments
DEHP	Department of Environment and Heritage Protection
DEWS	Department of Energy and Water Supply
DHPW	Department of Housing and Public Works
DNRM	Department of Natural Resources and Mining
EA	Environmental Authority
ELN	Electronic Lodgement Network
FAC	Finance and Administration Committee
FLP	Fundamental Legislative Principles under the *Legislative Standards Act 1992*
FPMS	*Financial and Performance Management Standard 2009*
LGAQ	Local Government Association of Queensland
Master Builders	Master Builders Association Queensland
MIM	Mount Isa Mines Limited
MPAQ	Master Plumbers’ Association of Queensland
NCC	National Construction Code
OQPC	Office of the Queensland Parliamentary Counsel
OSR	Office of State Revenue within Queensland Treasury
QAO	Queensland Audit Office
QBCC	Queensland Building and Construction Commission
QLS	Queensland Law Society
QRC	Queensland Resources Council
QTT	Queensland Treasury and Trade
QUU	Queensland Urban Utilities
TEL	Temporary Emissions Licence
TEP	Transitional Environmental Program

Glossary

Acts	All Acts referred to in this report refer to Queensland Acts unless otherwise specified
the Bill	*Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*
Farmor (as currently defined in the Ruling)	The person who is the registered holder of an exploration authority or a person who has lodged with the Department of Natural Resources and Mines an application to be a registered holder of an exploration authority that has been approved.[1]
Farmee (as currently defined in the Ruling)	Farmee is another person in relation to an exploration authority.[2]
Exploration amount (as currently defined in the Ruling)	An amount specified in a farm-in agreement to be expended after the agreement is made on either or both exploration and development of the exploration authority to be carried out after the agreement is made and within the period of time specified in the agreement.[3]
Exploration authority (as currently defined in the Ruling)	i. an exploration permit or prospecting permit under the *Mineral Resources Act 1989* ii. an authority to prospect under the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004* iii. a geothermal exploration permit under the *Geothermal Energy Act 2010* and iv. a GHG exploration permit under the *Greenhouse Gas Storage Act 2009*.[4]
Farm-in agreement (as currently defined in the Ruling)	A *farm-in agreement* means: i. a deferred farm-in agreement and ii. an upfront farm-in agreement[5]
the department	Queensland Treasury
OSR	The Office of State Revenue is a division within Queensland Treasury. Stakeholders and submissions refer to OSR and this report retains that term in that context. Whilst officers from OSR provided evidence to the Committee, the report identifies them as representing Queensland Treasury.

[1] Office of State Revenue Transfer duty – exemption for farm-in transactions in the resources sector 27 June 2013
[2] Office of State Revenue Transfer duty – exemption for farm-in transactions in the resources sector 27 June 2013
[3] Office of State Revenue Transfer duty – exemption for farm-in transactions in the resources sector 27 June 2013
[4] Office of State Revenue Transfer duty – exemption for farm-in transactions in the resources sector 27 June 2013
[5] Office of State Revenue Transfer duty – exemption for farm-in transactions in the resources sector 27 June 2013

Chair's Foreword

This report presents a summary of the Committee's examination of *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015.*

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The public examination process allows the Parliament to hear views from the public and stakeholders, which should make for better policy and legislation in Queensland.

The Bill is an omnibus Bill amending the following Acts:

- *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*;
- *Duties Act 2001*;
- *Environmental Protection Act 1994*;
- *First Home Owner Grant Act 2000Financial Accountability Act 2009*;
- *Payroll Tax Act 1971*;
- *Plumbing and Drainage Act 2002*;
- *Taxation Administration Act 2001*; and
- *Water Supply (Safety and Reliability) Act 2008.*

The purpose of the amendments include: provision of a payroll tax rebate on the wages of apprentices and trainees; giving support to electronic conveyancing in Queensland; providing legislative support for the duties concession on farm-in agreements; delaying the commencement of the provisions aimed at excluding motorcycle gang members from working in certain licensed occupations; requiring plumbers to install water meters; and a number of other administrative amendments.

The Committee received many submissions and spoke with numerous stakeholders during the course of its inquiry. It worked diligently and with good will on all sides in order to try to achieve consensus agreement on all aspects of the Bill. However, it became apparent, during its consideration of the Bill, that the Committee would be unable to reach agreement on all issues, including whether to recommend whether the Bill be passed. The government members accepted the Bill should pass. The non-government members considered that they could not support some of the amendments proposed in the Bill.

The Committee has made five recommendations which the Committee considers will enhance the practical operation of the amendments and ensure that stakeholders concerns are addressed.

After lengthy discussion and consideration, the Committee was also able to agree on the contents of the report, which contains details of the evidence provided to the Committee and the views of both government and non-government Members, for consideration by the Parliament during the second reading debate.

On behalf of the Committee, I would like to thank those who took the time to provide submissions, who met with the Committee and provided additional information during the course of this inquiry. The Committee very much appreciates this assistance. I would also like to thank the departmental officers for their cooperation in providing information to the Committee on a timely basis.

Finally, I would like to thank the other Members of the Committee for both their active participation and their determination to critically address the quite complex issues which the Bill examines.

Di Farmer MP
Chair

May 2015

Recommendations

Standing Order 132 states that a portfolio committee report on a bill is to indicate the Committee's determinations on:

- whether to recommend that the Bill be passed
- any recommended amendments
- the application of fundamental legislative principles and compliance with the requirements for explanatory notes.

The Committee has made the following recommendations:

Recommendation 1 **21**

The Committee recommends that Queensland Treasury undertake an education and awareness campaign providing detailed explanations about how the concession operates.

Recommendation 2 **28**

The Committee recommends that Queensland Treasury prepare and publish a Public Ruling confirming the administrative approach to be taken, including clear examples of what is considered to be ascertainable as opposed to solely milestone or outcome based, to ensure taxpayer certainty in regard to outcomes based agreements.

Recommendation 3 **32**

The Committee recommends that the Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships consider the issues raised by the Queensland Law Society and contemplate whether amendments are warranted to section 84G(1) to ensure that the meaning, as articulated in the explanatory notes, is clear.

Recommendation 4 **42**

The Committee recommends that the Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships consider the concerns raised by stakeholders that the 30 day notice provisions do not contemplate when disputes arise and give consideration to what actions are necessary to address these concerns.

Recommendation 5 **65**

The Committee recommends that the Minister consider investigating additional methods of increasing the employment opportunities of apprentices and trainees.

1 Introduction

1.1 Role of the Committee

The Finance and Administration Committee (the Committee) is a portfolio committee established by the *Parliament of Queensland Act 2001* and the Standing Orders of the Legislative Assembly on 26 March 2015.[6] The Committee's primary areas of responsibility are:

- Premier, Cabinet and the Arts; and
- Treasury, Employment, Industrial Relations, Aboriginal and Torres Strait Islander Partnerships.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio area to consider –

a) the policy to be given effect by the legislation;

b) the application of fundamental legislative principles to the legislation; and

c) for subordinate legislation – its lawfulness.

Standing Order 132(1) provides that the Committee shall:

a) determine whether to recommend that the Bill be passed;

b) may recommend amendments to the Bill; and

c) consider the application of fundamental legislative principles contained in Part 2 of the *Legislative Standards Act 1992* to the Bill and compliance with Part 4 of the *Legislative Standards Act 1992* regarding explanatory notes.

Standing Order 132(2) provides that a report by a portfolio committee on a bill is to indicate the Committee's determinations on the matters set out in Standing Order 132(1).

Standing Order 133 provides that a portfolio committee to which a bill is referred may examine the Bill by any of the following methods:

a) calling for and receiving submissions about a bill;

b) holding hearings and taking evidence from witnesses;

c) engaging expert or technical assistance and advice; and

d) seeking the opinion of other committees in accordance with Standing Order 135.

1.2 Referral

The Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships introduced the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015* (the Bill) to the Legislative Assembly on 27 March 2015. The Bill was referred to the Committee. The Legislative Assembly agreed to a motion requiring the Committee to report to the Legislative Assembly by Friday 22 May 2015.

[6] *Parliament of Queensland Act 2001*, s88 and Standing Order 194

1.3 Committee Process

The Committee's consideration of the Bill included calling for public submissions, a public departmental briefing and two public hearings. The Committee also sought additional written advice from the department and stakeholders.

The Committee considered expert advice on the Bills' conformance with fundamental legislative principles (FLP) listed in Section 4 of the *Legislative Standards Act 1992*.

1.4 Submissions

The Committee advertised its inquiry into the Bill on its webpage on 27 March 2015. The Committee also wrote to stakeholder groups inviting written submissions on the Bill.

The closing date for submissions was Monday 27 April 2015. The Committee received 18 submissions. A list of those who made submissions is contained in Appendix A. Copies of the submissions are published on the Committee's website and are available from the Committee secretariat.

1.5 Public departmental briefing

The Committee held a public departmental briefing on the Bill with officers from Queensland Treasury, Office of Fair and Safe Work Queensland, Department of Housing and Public Works, Department of Energy and Water Supply, Department of Environment and Heritage Protection, and the Office of Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships on Friday 10 April 2015. A list of officers who gave evidence at the public departmental briefing is contained in Appendix B. A transcript of the briefing has been published on the Committee's website and is available from the committee secretariat. The Committee also sought additional written information from the department subsequent to the briefing.

The Committee also held a private briefing with officers from Queensland Treasury in order to receive additional explanations and clarifications of issues raised in the written briefings. A transcript of the briefing was not prepared, however, a copy of the audio file is available from the committee secretariat. Subsequent to this briefing, the Committee provided stakeholders with the opportunity to comment further on the information provided.

The lapsed *Revenue and Other Legislation Amendment Bill 2014* was referred to the former Finance and Administration Committee (54th Parliament). Substantial parts of the current Bill are the same as the lapsed Bill. The former Committee held a public departmental briefing with Queensland Treasury and Trade (QTT) on 16 December 2014. However, that Committee was unable to complete its examination of the Bill prior to the dissolution of the Parliament. The information from the public briefing has been considered by the current Committee as part of its examination of the current Bill. A transcript of the briefing has been published on the Committee's website and is available from the committee secretariat.

1.6 Public hearing

On Wednesday 6 May 2015, the Committee held a public hearing on the Bill with representatives from organisations which provided submissions. A list of representatives who gave evidence at the hearing is contained in Appendix C. A transcript of the briefing has been published on the Committee's website and is available from the committee secretariat. The Committee also sought additional written information from stakeholders subsequent to the hearing.

1.7 Policy objectives: Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015

The Bill introduces amendments to the *Payroll Tax Act 1971* to provide a payroll tax rebate on the wages of apprentices and trainees. The Bill also introduces amendments to the *Duties Act 2001* and the *Taxation Administration Act 2001* to support electronic conveyancing in Queensland. It also amends the *Duties Act 2001, First Home Owner Grant Act 2000, Payroll Tax Act 1971* and the *Taxation Administration Act 2001* to maintain their currency and ensure their proper operation.

The Bill will also amend:

- *Financial Accountability Act 2009*;
- *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*;
- *Environmental Protection Act 1994*;
- *Plumbing and Drainage Act 2002*; and
- *Water Supply (Safety and Reliability) Act 2008*.

1.8 Outcome of Committee deliberations

Standing Order 132(1)(a), requires that the Committee examine the Bill and determine whether to recommend that the Bill be passed. During its consideration of the Bill it became apparent that the Committee would be unable to reach agreement on this issue. The government members accepted the Bill should pass with amendments. The non-government members considered that additional amendments would be required before they could support the Bill.

Whilst the Committee did not reach agreement on whether to recommend that the Bill be passed, it reached consensus agreement on the proposed amendments to the *Duties Act 2001*, the *Environmental Protection Act 1994*, the *Financial Accountability Act 2009*, the *First Home Owner Grant Act 2000,* the *Payroll Tax Act 1971*, and the *Taxation Administration Act 2001*, subject to the recommendations included in relevant sections of this report.

The Committee did not agree on the proposed amendments to the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013,* the *Plumbing and Drainage Act 2002* and the *Water Supply (Safety and Reliability) Act 2008*. The reasons for this are outlined in the applicable sections of this report.

Not withstanding the Committee's acceptance of the proposed amendments to the Duties Act, the Members of the Committee unanimously agreed that the significant number of issues raised by stakeholders are due, in part, to the inability of Queensland Treasury to adequately communicate:

- how the concession on farm-in agreements operates;
- how the concession is aimed at benefiting the majority of stakeholders; and
- the practical implications of the alterations proposed by stakeholders which would significantly increase the compliance burden for all stakeholders should these amendments be accepted.

The Committee considered that Queensland Treasury needs to improve on its consultation and communication processes.

2 Examination of the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015 – Preliminary*

2.1 Reasons for the Bill

The explanatory notes state that the amendments to the *Payroll Tax Act 1971* give effect to the Government's 2015 election commitment to provide a payroll tax rebate on the wages of apprentices and trainees. Other amendments to the *Duties Act 2001* and the *Taxation Administration Act 2001* are to support electronic conveyancing in Queensland. Amendments to the *Duties Act 2001*, *First Home Owner Grant Act 2000, Payroll Tax Act 1971* and the *Taxation Administration Act 2001* (revenue legislation) are to maintain their currency and ensure their proper operation.[7]

2.2 Alternative ways of achieving policy objectives

The explanatory notes indicate that the policy objectives could only be achieved by legislative amendment.[8]

2.3 Stakeholder consultation

2.3.1 Amendments to revenue legislation

The explanatory notes outline that consultation on the amendment to support electronic conveyancing for transfer duty in Queensland was undertaken with all relevant Departments and the Queensland Law Society (QLS).[9]

Queensland Treasury explained that specific consultation was undertaken with Department of Natural Resources and Mines (DNRM) because that department runs the titles register. Queensland Treasury advised that they had made a presentation in relation to the Electronic Lodgement Network (ELN) model to DNRM. They stated that they had responded to any feedback from DNRM provided in relation to the model. Queensland Treasury advised:

> *The Department of Justice and Attorney-General was also consulted in relation to the range of the new offence provisions that were included in that framework's head of provisions and it was happy with the offence and penalty amounts that were set for those new offence provisions.*[10]

The explanatory notes also confirm that industry consultation was undertaken during development of the administrative arrangement for farm-in transactions in the resources sector.[11] Queensland Treasury advised the Committee that the industry representatives who were consulted were the Queensland Resources Council (QRC), the Australian Petroleum Production and Exploration Association (APPEA) and the Association of Mining and Exploration Companies (AMEC).[12]

The department stated:

> *…we also have an Office of State Revenue taxation consultative committee that has representatives from the various accountants, the Bar Association, the Law Society, which has a property group, and other individual representatives*.[13]

[7] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 1
[8] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 27
[9] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 27
[10] Ms Kross, Queensland Treasury, Public Briefing Transcript 10 April 2015: 4
[11] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 27
[12] Ms Kross, Queensland Treasury, Public Briefing Transcript 10 April 2015: 4
[13] Ms Kross, Queensland Treasury, Public Briefing Transcript 10 April 2015: 4

The explanatory notes outline that community consultation was not considered necessary or appropriate given that these amendments have either operated under administrative arrangements, are taxpayer beneficial, make technical changes to the legislation to ensure its continued proper operation or are necessary to protect revenue.[14]

The Committee understands from the explanatory notes that there was also no consultation on the payroll tax rebate.[15] The Committee sought an explanation from Queensland Treasury as to why this was the case. The department explained that as the rebate is implementing a government election commitment, it is generally not considered necessary to consult on proposals of that nature. Given that the other amendment to the *Payroll Tax Act 1971* is considered one of a revenue protection measure, the department explained that consultation is generally not considered appropriate in a revenue context.[16]

At the public hearing on 6 May 2015, the Committee asked the stakeholders whether they were consulted by the department in the preparation of the Bill. QRC and the QLS stated that they were not consulted but were aware of the Bill because the issues were raised in the (lapsed) Bill.[17] AMEC and Total GLNG also explained that they were not consulted but knew the issue existed.[18]

In response to the issue of consultation, Queensland Treasury advised extensive consultation was undertaken in the pre-development and development phase of the concession. They advised that following this consultation Public Ruling DA000.12.1 (the Ruling) was published, setting out the approved concession model.[19]

Queensland Treasury noted that the farm-in concession has been operating under an administrative arrangement since 27 June 2013 and that it has at all times been possible for industry groups to raise ongoing or emergent concerns. They noted that no industry groups or QLS have raised any issues in relation to the concession during this period.[20]

These issues were also flagged in the lapsed *Revenue and Other Legislation Amendment Bill 2014* considered by the former Finance and Administration Committee (54th Parliament).

The Committee asked Queensland Treasury why there was no consultation during drafting of the Bill. They advised that it is the longstanding bi-partisan practice across past governments for consultation on revenue legislation to occur at policy development stage, where appropriate and approved, and for legislative drafting to be kept Cabinet confidential.[21]

2.3.2 Amendments to the *Financial Accountability Act 2009* (FA Act)

The explanatory notes state that consultation was undertaken with the Auditor-General with respect to the following proposed changes:

- the Treasurer being able to enter into derivative transactions on behalf of the State
- making the legislation clearer about reporting on derivative transactions
- the transfer of companies between departments; and
- allowing a non-public servant to assume the responsibilities of Head of Internal Audit in a department.

The explanatory notes indicate that the Auditor-General raised no objections to the amendments.[22]

[14] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 27
[15] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 27
[16] Ms Kross, Queensland Treasury, Public Briefing Transcript 10 April 2015: 4
[17] Mr Barger and Mr Fitzgerald, Transcript 6 May 2015 (1): 13
[18] Mr Hogan and Mr Sutherland, Transcript 6 May 2015 (1): 13
[19] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 1
[20] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 1
[21] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 1
[22] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 27

2.3.3 Amendments to the *Environmental Protection Act 1994*

The explanatory notes outline that no consultation with the community was undertaken for the proposed amendments as they are an administrative fix to existing tools. However, consultation was undertaken with all government agencies with an interest in the amendments and no issues were raised prior to the introduction of the Bill into Parliament.[23]

The Committee asked the Department of Environment and Heritage Protection (DEHP) to explain why there was a lack of consultation. DEHP advised that as the amendments are administrative in nature entirely, it was felt that it was reasonable to proceed without wide consultation.[24]

At the public hearing on 6 May 2015, the Committee asked the stakeholders whether they were consulted about the amendments prior to the introduction of the Bill. QRC and the QLS replied that they were not consulted on this specific Bill but had been consulted on the lead-up.[25]

2.3.4 Amendments to the *Plumbing and Drainage Act 2002* and *Water Supply (Safety and Reliability) Act 2008*

The explanatory notes indicate that the amendments arose from the extensive consultation about the installation of water meters during the former State Development, Infrastructure and Industry Committee's examination of the *Water Supply Services Legislation Amendment Bill 2014.* The explanatory notes also outline that the water sector, represented by the Queensland Water Directorate (qldwater), and the plumbing industry were consulted.[26]

The Committee asked the Department of Housing and Public Works (DHPW) for further clarification on the consultation process. The department explained:

> *As a result of it being a 100-day election commitment, the department had to move fairly quickly in terms of consultation, as I understand it, with a number of key stakeholders, including the Master Plumbers' Association of Queensland, which obviously has a vested interest in the licensing of plumbers, the Plumbers Union of Queensland, the LGAQ—the Local Government Association of Queensland—and, of course, through my colleagues in the Department of Energy and Water Supply and also associations such as Queensland Urban Utilities, who are our major water service proprietor and also Unitywater as a major service provider.* [27]

The relevant stakeholders at the public hearing on 6 May 2015 confirmed that they were consulted.[28]

2.4 Estimated cost of government Implementation

The explanatory notes state that the payroll tax rebate amendments are to be funded through a $45 million allocation over 3 years. This is expected to be sufficient to cover the estimated reduction in payroll tax revenue over the 2015-16, 2016-17 and 2017-18 financial years.[29]

The explanatory notes also state that implementation costs for the amendments to implement electronic conveyancing for transfer duty in Queensland are $1 million. It is anticipated that the implementation costs for the remaining revenue legislation amendments will not be significant as the amendments fall within existing frameworks of administration.[30]

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[23] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 27
[24] Mr Wade, Department of Environment and Heritage Protection, Public Briefing Transcript 10 April 2015: 4
[25] Mr Barger and Mr Fitzgerald, Transcript 6 May 2015 (2): 5
[26] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 27-28
[27] Mr Essery, Department of Housing and Public Works, Public Briefing Transcript 10 April 2015: 5
[28] Mr Hoffman, Mr O'Carroll, Mr Belz and Ms Cornah, Transcript 6 May 2015 (2): 5
[29] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 21
[30] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 21

The Committee sought clarification from Queensland Treasury as to how the cost of electronic conveyancing will be funded and whether a cost/benefit analysis had been undertaken. The department advised that the cost will be met from the department's internal savings/budget.[31] However, they added that there has no analysis done on the benefits. They stated:

> *The entire implementation and commencement of the electronic conveyancing process is principally being run out of the Department of Natural Resources and Mines. It may well be that they had done some analysis in relation to the overall benefits. It is certainly not something that we have been privy to.*[32]

Queensland Treasury emphasised that the amendments in the Bill are to only facilitate the participation from a revenue perspective in e-conveyancing as e-conveyancing itself is being done effectively through the titles office. The department explained:

> *Revenue is part of it in that, to get registered, you have to pay stamp duty effectively and as the system is changing as a result of electronic conveyancing, because it is being done in this electronic environment. The amendments that are in the bill are about facilitating it, because the provisions that are currently in the law are designed to follow the conveyancing practice as occurs now.*[33]

The department advised that the costs involve making necessary changes to their computer system in the revenue office to be able to support the electronic conveyancing method.[34]

The explanatory notes also indicate that there will be no additional costs to implement amendments to the *Plumbing and Drainage Act 2002* and *Water Supply (Safety and Reliability) Act 2008.*[35] The Committee sought clarification as to what is meant by 'additional cost'. The Department of Energy and Water Supply (DEWS) explained that there is no additional cost to them because the administration of disciplinary action for licensees is handled by the Queensland Building and Construction Commission (QBCC), so they will continue to monitor those who are working without licences.

DEWS stated:

> *The actual cost to the department will merely be in bringing into effect the legislation, obviously representation at the parliament and then subsequently advising stakeholders of that.*[36]

DEWS also confirmed that training for the amendments to the Act is done by the QBCC.[37]

2.5 Consistency with legislation of other jurisdictions

The explanatory notes list the following alignment with other jurisdictions:

- 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 electronic conveyancing for transfer duty in Queensland. However, variations in the duty legislation in each jurisdiction means there will, necessarily, be different approaches to the amendments to that legislation to support electronic conveyancing.

[31] Ms Goli, Queensland Treasury, Public Briefing Transcript 10 April 2015: 7
[32] Ms Kross, Queensland Treasury, Public Briefing Transcript 10 April 2015: 6
[33] Ms Goli, Queensland Treasury, Public Briefing Transcript 10 April 2015: 6
[34] Ms Goli, Queensland Treasury, Public Briefing Transcript 10 April 2015: 6
[35] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 21-22
[36] Mr Essery, Department of Housing and Public Works, Public Briefing Transcript 10 April 2015: 7
[37] Mr Essery, Department of Housing and Public Works, Public Briefing Transcript 10 April 2015: 8

The concession for farm-in agreements is not uniform or complementary to legislation of the Commonwealth or another state. While some other states also provide transfer duty relief for farm-in agreements, there is no uniform legislative model or formal arrangement between the states to provide such relief.

- The amendment to the *Payroll Tax Act 1971* clarify the application of exemptions from liability under the relevant contract provisions, will achieve harmonised policy outcomes with Victoria and New South Wales, who have previously amended for similar reasons.
- The amendment of the *Taxation Administration Act 2001* provide for the payment of interest on refunds of tax or late payment interest resulting from an objection decision will align Queensland with all other states and territories.
- The amendments to the *Financial Accountability Act 2009* are mainly administrative in nature and relate to the internal management of Queensland's public sector. As a result the amendments are not substantially uniform or complementary to legislation of the Commonwealth or another state.
- The amendments to the *Environmental Protection Act 1994* are consistent with legislation of other jurisdictions.
- The amendments to the *Plumbing and Drainage Act 2002* and *Water Supply (Safety and Reliability) Act 2008* relate only to Queensland. In other states, the service provider determines if its authorised person installing water meters need be a plumber, rather than state legislation determining this. Generally this work is done by water industry workers who have undertaken training under the Water Industry (Civil) Curriculum on installing, maintaining and repairing water meters, although the service provider can decide to use plumbers if it wishes.[38]

2.6 Commencement

Clause 2 of the Bill provides that certain sections will commence on 1 July 2015 and parts 4, 8 and 10 will commence on a date to be fixed by proclamation.

3 Examination of the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015* – Amendment of *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* – Clause 3 and 4

Clause 3 specifies the amendments are to be made to the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*. Clause 4 amends the commencement provisions of the Act to provide that parts 8, 14 and 24 will commence on 1 July 2016.[39]

[38] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 28-29
[39] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 30

In introducing the Bill, the Treasurer stated that the amendments are to:

> *…delay for a further 12 months certain not commenced amendments in the Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013 which would have unduly added a regulatory burden to the assessment of certain licensed occupations covered by the Electrical Safety Act 2002, the Queensland Building and Construction Commission Act 1991 and the Work Health and Safety Act 2011.*[40]

The amendments to the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* were aimed at excluding motorcycle gang members from working in certain licensed occupations covered by the abovementioned Acts.[41] The Treasurer explained that these provisions, if commenced, will cause significant delays in processing licence applications and renewals. He stated that there are concerns that any benefits arising from their implementation will be outweighed by the costs to workers in potentially restricting Queenslanders' ability to commence or continue to earn a living in their licensed occupation.[42]

On 27 March 2015, the Attorney-General, Minister for Justice and Minister for Training and Skills reaffirmed the Government's commitment to reviewing and addressing organised crime in Queensland. The Attorney-General also announced that a high-level taskforce was being formed to undertake a review of the following legislation passed in 2013:

- *the Criminal Law (Criminal Organisations Disruption) Amendment Act 2013*
- *the Criminal Code (Criminal Organisations) Regulation 2013*
- *the Tattoo Parlours Act 2013*
- *the Vicious Lawless Association Disestablishment Act 2013.*

The Attorney-General stated that the taskforce will consist of representatives of the Police Service, the Queensland Law Society (QLS), the Bar Association of Queensland, the Queensland Police Union and representatives of other relevant government agencies. The Attorney-General explained that the purpose of the taskforce will be:

> *…to advise whether the legislation is effectively facilitating the successful prevention and investigation of organised crime and the successful prosecution of individuals. The task force will advise how the legislation might best be amended, improved or replaced to ensure that we are targeting organised crime across the state.*[43]

The Premier and Minister for the Arts announced that Mr Michael Byrne QC will lead the inquiry which is due to report to the Government by 30 October 2015.[44]

The explanatory notes outline that the delay:

> *…allows for the Government's review of these laws to be undertaken and to implement any relevant recommendations arising from the review.*[45]

[40] Queensland Legislative Assembly, Hon CW Pitt MP, Treasurer, Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill Introduction, *Parliamentary Debates (Hansard)*, 27 March 2015: 236

[41] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 3

[42] Queensland Government, Queensland Organised Crime Commission of Inquiry, Terms of Reference 2015

[43] Queensland Legislative Assembly, Hon YM D'Arth MP, Attorney-General, Ministerial Statements *Parliamentary Debates (Hansard)*, 27 March 2015: 204

[44] Queensland Legislative Assembly, Hon A Palaszczuk MP, Premier, Ministerial Statements *Parliamentary Debates (Hansard)*, 27 March 2015: 201

[45] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 7

DHPW advised the Committee that they considered the provisions of the Act to be administratively cumbersome and, likely to result in disruption and delays in the processing of licence applications and renewals for these licence classes. They stated that they have consulted with the QBCC, which supports the postponement of the commencement of these provisions which are to be postponed for one year to commence on 1 July 2016.[46]

The department emphasised:

> *I note that the delay in commencement of the amendment act will allow for the government's review of these provisions to occur, including an assessment of whether these provisions are required.*[47]

3.1 Committee comments

The Committee did not agree on the proposed amendments to the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013.*

The government Members of the Committee were satisfied with the amendment to delay for a further 12 months certain not yet commenced provisions. They considered that it would be a further imposition on the people of Queensland to proceed with the amendments in the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013* without regard to the findings of the review.

The non-government Members of the Committee indicated their concern with the amendments to delay for a further 12 months certain not yet commenced amendments in the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*. The non-government members of the Committee were of the view that while the legislation remains in place the provisions provided for in that legislation should be enacted. They noted that the government has indicated they will avail themselves of the opportunity to conduct a review of the legislation later in the year; however, in the interim the non-government Members of the Committee are of the view it is appropriate for the provisions remain in place lest their delay predicate or influence the outcome of the review.

4 Examination of the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015* – Amendment of *Duties Act 2001* – Clauses 6 to 14

The Committee noted that the amendments to the *Duties Act 2001* were included in the lapsed *Revenue and Other Legislation Amendment Bill 2014.* The Committee asked Queensland Treasury if there are any additional changes to what has been previously included and discussed at the public departmental briefing held on 16 December 2014. The department explained that the only additional amendment in relation to the revenue measures is the payroll tax rebate.[48]

Clause 6 amends the existing note to section 8 which imposes transfer duty on dutiable transactions. The new part 8A identifies parts of the *Duties Act 2001* which deal with concessions and exemptions for transfer duty.[49]

[46] Mr Backhouse, Department of Housing and Public Works, Public Briefing Transcript 10 April 2015: 3
[47] Mr Backhouse, Department of Housing and Public Works, Public Briefing Transcript 10 April 2015: 2-3
[48] Ms Kross and Ms Goli, Queensland Treasury, Public Briefing Transcript 10 April 2015: 3 & 4
[49] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 30

Clause 7 inserts a new subsection (6A) which provides that:

> *The dutiable value of a dutiable transaction that is an agreement for the transfer of dutiable property that is a farm-in agreement is determined under part 8A*[50]*.*

Clause 8 inserts a new note to section 16, which is the general provision prescribing when liability for transfer duty imposed on a dutiable transaction arises. The note draws attention to new sections 156H and 156K, which contain rules about when liability for transfer duty arises on transfers in particular ELN related scenarios. The explanatory notes state that the amendments establish a new liability framework for ELN transfers, including special rules imposing and reconciling multiple liabilities in new part 15, division 2 in chapter 2. [51]

Clause 9 amends section 18 and its heading to include a reference to *ELN transfer document*. This ensures that a transfer duty statement is not required for a transfer if an ELN transfer document exists, which effects or evidences the transfer.[52]

Clause 10 amends section 19 to include a reference to *ELN transfer document* in the heading and subsections (1)(a) and (3)(a). This amendment allows a statutory entity for a statutory dutiable transaction under subsection (1), and the parties liable to pay transfer duty relating to another dutiable transaction under subsection (3), to meet the lodgement obligations prescribed under section 19 by lodging an ELN transfer document that effects or evidences the relevant dutiable transaction.[53]

Clause 11 amends section 20 and its heading to include references to *ELN transfer document*. This means that where one of the parties to the dutiable transaction complies with a requirement under section 19 by lodging an ELN transfer document, the other parties to the transaction will be relieved from complying with the requirement to lodge under section 19.[54]

Clause 12 inserts a new note to section 21(1) to refer to new part 15, division 2 in chapter 2 as follows:

> **Clause 12 Amendment of s 21 (No double duty – general)**
> Section 21(1), note -
> *omit, insert -*
> *Notes -*
> 1 For objections and appeals against assessments of duty, see the Administration Act, part 6.
> 2 For a dutiable transaction that is an ELN transfer, see also part 15, division 2.

[50] *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*, Clause 7
[51] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 30
[52] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 30
[53] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 31
[54] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 31

Clause 13 inserts new subsection (2A) into section 22 as follows:

Clause 13 Amendment of s 22 (No double duty – particular dutiable transactions)

Section 22 -

Insert -

(2A) Also, if a payment commitment is made for a dutiable transaction that is an agreement for the transfer of dutiable property, no transfer duty is imposed on an ELN transfer of the dutiable property to the transferee under the agreement.

Notes -

1 In relation to subsections (2) and (2A), for a dutiable transaction that is an ELN transfer, see also part 15, division 2.

2 See part 15, division 3 in relation to the making of a payment commitment for an agreement for the transfer of dutiable property.

Proposed new subsection 2A provides that no transfer duty will be imposed on an ELN transfer of dutiable property to the transferee under an agreement for transfer for which a payment commitment is made. This subsection mirrors the operation of section 22(2) which makes similar provision for a transfer to a transferee under an agreement for transfer on which duty has been paid.[55]

Clause 14 amends section 30 to include a reference to ELN transfer document in subsection (6). This amendment ensures that lodgement of an ELN transfer document is included for the purposes of a lodgement requirement arising under subsection (6), where section 30 applies to require aggregation of dutiable transactions.[56]

The Treasurer stated when introducing the Bill that the amendments to the *Duties Act 2001* are to support the introduction of electronic conveyancing in Queensland. He explained that electronic conveyancing will provide a process for settling qualifying land transactions between parties and their financiers through a shared electronic workspace as an alternative to the traditional face-to-face settlement process. The Treasurer also advised that the process will involve the electronic creation of transfer forms, their digital signing, and progression through financial settlement, transfer duty endorsement and lodgement with the Registrar of Titles via an electronic work space.[57]

The former Committee asked QTT to clarify why this amendment was required. QTT explained that electronic conveyancing is micro-economic reform of the Council of Australian Governments (COAG). The department stated that the process of conveyancing usually involves parties to a conveyancing process, represented by solicitors, appearing at the titles office for a settlement. The department advised that electronic conveyancing will allow for those parties to interact electronically in their offices and to submit the documents electronically to the titles office.[58]

The Committee asked Queensland Treasury what the benefits are in implementing electronic conveyancing. They advised that the settlement process is usually attended to in person by representatives from relevant stakeholders' financial institution and legal representatives at the Titles Office. The department explained that DRNM are anticipating the overall cost and benefits to be a reduction of compliance cost, time saving in registration of titles and savings for all relevant parties.[59]

[55] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 31

[56] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 31

[57] Queensland Legislative Assembly, Hon CW Pitt MP, Treasurer, Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill Introduction, *Parliamentary Debates (Hansard)*, 27 March 2015: 235-236

[58] Ms Goli, Queensland Treasury and Trade, Public Briefing Transcript 16 December 2014: 4

[59] Ms Kross, Queensland Treasury, Public Briefing Transcript 10 April 2015: 6

The department emphasised that the electronic conveyancing method is merely an alternative to the current method, not a complete replacement. They advised:

> *People will still be able to do their conveyancing the way they do it now; this is an alternative. But in the future this will be the way that people will go. So in a sense we have to have two systems running from a stamp duty perspective: one for people who are doing it the conventional way that it is done now and one for the future.*[60]

The former Committee were concerned about the possibility of fraud, theft or significant mistakes and queried whether there were any protections in the electronic system. QTT replied that the expectation is that all parties are getting 'real-time verification of the information' so it is anticipated that there is a lower risk of error. The department stated:

> *The system is designed to reduce the incidence of that because it is all electronic and everything that is done is real-time checking. The way it works is that, as part of the entire work space system, both the revenue office and DNR will be, according to the language of the system, 'pinged' in the system. So the data packages will be submitted and transmitted between each subscriber and person participating in the PEXA settlement system with verification of data returning back at each stage.*[61]

The explanatory notes outline:

> *The electronic settlement process differs from current conveyancing practice in a number of key respects. The principal differences for duty purposes are that:*
>
> - *ELN transfers can be "unsigned"; and*
> - *duty may be paid out of settlement funds after endorsement and Titles registration.*[62]

QTT advised that all parties would need to establish a digital ID and have certain nominated persons who can digitally sign, so 'every single piece of data is technically signed in the electronic world'.[63]

The explanatory notes also stipulate that as electronic settlement in Queensland is untested, to minimise risk to revenue, transfer duty endorsement in an ELN will only be permissible for cottage conveyance type (meaning residential) transactions. In particular, the dutiable property transferred must only be residential land and incidental chattels, and there must be a preceding agreement for transfer entered into outside the ELN.[64]

4.1 Committee comments

The Committee is satisfied with the proposed amendments to the *Duties Act 2001* to provide an appropriate transfer duty and administration framework to support the introduction of electronic conveyancing as enabled in Queensland through the provisions of the *Electronic Conveyancing National Law (Queensland) Act 2013.*

[60] Ms Goli, Queensland Treasury, Public Briefing Transcript 10 April 2015: 6
[61] Ms Kross, Queensland Treasury and Trade, Public Briefing Transcript 16 December 2014: 4
[62] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 5
[63] Ms Kross, Queensland Treasury and Trade, Public Briefing Transcript 16 December 2014: 4
[64] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 5

5 Examination of the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015* - Amendment of *Duties Act 2001* – Clause 15

Clause 15 inserts a new part 8A into chapter 2 which provides for the new transfer duty concession for farm-in agreements.[65]

When introducing the Bill, the Treasurer explained that it seeks to make amendments to the *Duties Act 2001* to include concessional treatment for agreements for the transfer of exploration authorities under certain resource sector farm-in agreements which will assist in the exploration and development of exploration authorities in Queensland and recognises the risks to return on investment for exploration activity. He added:

> *The farm-in agreements that are eligible for the concession will be defined; however, the criteria are defined so that relief will be available for the farm-in arrangements most commonly used in the sector.*[66]

The explanatory notes state that the 2012-13 State Budget adopted an announcement in the *2011–12 Mid Year Fiscal and Economic Review* that direct and indirect transfers of exploration authorities would be subject to duty from 10:30am on 13 January 2012 (start time). At that time, it was also announced that certain farm-in agreements would not be subject to duty to the extent that the consideration under the agreement comprised an exploration amount, with the scope and technical design of the concession to be settled after consultation between the Office of State Revenue (OSR) and industry.[67]

The explanatory notes outline that the concession is currently administered under an administrative arrangement which was published on 27 June 2013 as Public Ruling DA000.12.1 – *Transfer duty – exemption for farm-in transactions in the resources sector*. A copy of Public Ruling DA000.12.1 is contained in Appendix D. The explanatory notes state:

> *The administrative arrangement applies to farm-in agreements entered into from the start time, and transfers of interests in exploration authorities under those farm-in agreements (also from the start time). Transfers of interests in exploration authorities under agreements entered into before the start time are exempted through the operation of section 636 of the Duties Act 2001. That section was introduced by the Fiscal Repair Amendment Act 2012 to govern the transitional operation of its provisions, which first included exploration authorities as dutiable property.*[68]

5.1 Background – farm-in concessions and Public Ruling

In January 2012, the then government announced that exploration authorities would be made liable to duty, with the objective of raising additional State revenue of $30m per annum. Following a subsequent submission from QRC and industry consultation by OSR, the government announced in the 2012-13 State Budget in September 2012 that a concession would be provided for farm-ins, as part of its commitment to support Queensland's junior exploration sector.[69]

[65] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 31

[66] Queensland Legislative Assembly, Hon CW Pitt MP, Treasurer, Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill Introduction, *Parliamentary Debates (Hansard)*, 27 March 2015: 236

[67] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 8

[68] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 8

[69] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 1

Queensland Treasury explained that transfer duty is levied on a range of transactions involving specified dutiable property. The department stated that these transactions include both agreements between parties for the transfer of dutiable property, as well as the subsequent transfer of that property.[70]

The department advised that the categories of dutiable property included resource production tenures such as mining tenements and petroleum authorities, and agreements and transfers of these had been subject to duty. The department explained that resource exploration interests were not included as dutiable property.[71]

Queensland Treasury undertook pre-concession consultation on the possible concessional treatment for farm-in agreements from February 2012 to August 2012, receiving submissions from QRC and the Australian Petroleum and Production Authority (APPEA) and liaised with WA, SA and NT on the concession provided in those jurisdictions. OSR then developed a concession model reflecting the predominant farm-in practice, as advised by industry. Government approval was then obtained for formal industry consultation on the model and this decision was noted in the 2012-13 State budget.[72]

Queensland Treasury advised that during the first round of consultation in early 2012, it was acknowledged that farm-in agreements could be entered into in a variety of ways and that from a practical perspective, the industry needed certainty in determining when an agreement would be dutiable, and how duty should be calculated. The department stated that the discussions informed them of the most common features of farm-in agreements. They explained:

> *The information provided dealt with upfront farm-in agreements and deferred farm-in agreements as being mutually exclusive types of agreements. It also indicated that transfers under the agreements were usually conditional on the farmee expending a certain amount of money on exploration.*[73]

Following approval, OSR wrote to relevant stakeholders including QRC, the Association of Mining and Exploration Companies (AMEC), APPEA and the members of OSR's Taxation Consultative Committee (TCC), comprised of representatives from the legal and accounting professions, including the Queensland Law Society (QLS) in November 2012, explaining the proposed model in detail and inviting comments. Six submissions were received including submissions from QRC, APPEA, AMEC, two private legal/accounting forms and a research body with representation on the TCC. QLS made no submission.[74]

Between December 2012 and July 2013, OSR undertook extensive and detailed analysis of the submissions and their impact on the policy and purpose of the proposed concession to ensure it delivered relief to the majority of farm-in transactions, affected by the timing of liability and valuation issues central to industry concerns. Queensland Treasury stressed that the policy exercise was not to provide an exemption or concession for all farm-in arrangements or a general exemption for transfers of exploration authorities. [75]

A number of adjustments were made to the model to address issues raised in the consultation comments. However, for policy and taxation reasons, it was made clear in the consultation outcomes to those industry groups that made submissions, that no changes were made in relation to a number of issues that had been raised in those submissions.[76]

[70] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 1
[71] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 1
[72] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 3
[73] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 3
[74] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 3
[75] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 3
[76] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 3

The then Government was briefed on the consultation outcomes and approved a model. On 27 June 2013, Public Ruling DA000.12.1 (the Ruling) was published, setting out the approved concession model.[77]

Queensland Treasury explained that since then, industry groups and stakeholders were able to raise issues in relation to the concession. The department stated:

> *No Industry groups or the QLS have raised any issues in relation to the concession in this period.*[78]

Queensland Treasury also advised that opportunities to raise any concerns were available in periodic meetings between the OSR and the TCC, QLS and OSR's Resource Consultative Committee (RCC) which was established in July 2014. The RCC comprises industry and organisation stakeholder representatives from the petroleum and mining industries, including QRC and APPEA. Queensland Treasury advised that no issues have been raised by industry through any of these forums'.[79]

Whilst agreeing that Queensland Treasury did consult with industry around the decision back in January 2012 to impose stamp duty on exploration tenures, QRC suggested that this:

> *…should not be characterised as a genuine consultative process which subsequently informed the drafting of a Bill in 2015. QRC suggests that consultations three years ago, which occurred around a policy decision made by a former Government (now twice removed from the current Government), should not be represented as "…extensively consulted upon policy settings for the concession…".*[80]

QRC also confirmed that the issues raised with the Committee were raised three years ago at the time of the decision. However they consider

> *This consistency of concern from industry does not invalidate the case which industry has presented.*[81]

QRC emphasised that they welcomed the opportunity to work with OSR in the development of the Bill and for the most part, the Bill reflects the draft ruling that preceded it. However, they expressed the desire to the administrative complexity of the Bill be revisited to ensure that it reflects existing industry practice. They consider that, as drafted, some of the provisions risk stifling the exploration activity that the concession was designed to promote.[82]

The QLS advised the Committee:

> *The Office of State Revenue (OSR) refers to adherence to pubic ruling DA000.12.1 (issued June 2013) (the Ruling) as if the Ruling has the force of law. It is lamentable that it has taken more than 3 years since the announcement of bringing exploration authorities into the duty base for the Government to introduce legislation. In that context, the ruling has provided some temporary certainty, albeit with the limitations which are just now being addressed. However, in our view, mere reliance on the Ruling does not support a narrow legislative concession. It is only Parliament who has the power to enact laws of this nature.*[83]

[77] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 3
[78] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 4
[79] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 4
[80] Correspondence to FAC from Queensland Resources Council, dated 19 May 2015: 1
[81] Correspondence to FAC from Queensland Resources Council, dated 19 May 2015: 1
[82] Correspondence to FAC from Queensland Resources Council, dated 19 May 2015: 2
[83] Correspondence to FAC from Queensland Law Society, dated 19 May 2015: 2

AMEC advised the Committee that it is:

> *…astounded that the Queensland Government regards consultation in excess of three years ago could be considered of sufficient relevance by Treasury to be used as the basis for this exemption legislation.*[84]

They consider:

> *It would be more accurate to relay that industry have had great difficulty accessing this exemption and have had little helpful advice from Treasury on the matter. After many concerns were voiced, the Office of State Revenue (OSR) and Department of Natural Resources and Mines (DNRM) held a workshop for AMEC members on 14th of Nov, 2013 to attempt to provide clarity for industry. Other industry bodies undoubtedly held similar forums. This was unsuccessful, as the exemption framework does not reflect industry practice for hybrid or outcome based farm-ins.*[85]

5.2 Public Ruling DA000.12.1 – Transfer duty – exemption for farm-in transactions in the resources sector

Queensland Treasury defines a Public Ruling to be the:

> *…published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates.*[86]

The Public Ruling replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses.[87]

OSR's website states:

> *Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling – that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.*[88]

Public Ruling DA000.12.1 - *transfer duty – exemption for farm-in transactions in the resources sector* is dated 27 June 2013 and outlines the following points:

1. *Under the Duties Act 2001 (Duties Act), duty applies to the direct and indirect transfer of mining tenements and certain petroleum authorities.*
2. *Dealings in relation to an exploration authority were previously exempt from duty. The Fiscal Repair Amendment Act 2012 implemented the announcement in the State Budget 2012-13 that duty will apply to the direct and indirect transfer of an exploration authority from the start time.*
3. *The Budget also announced that exploration and development expenditure occurring under a farm-in agreement will be exempt from duty.*
4. *Pending amendment of the Duties Act, the exemption will be administered under an administrative arrangement in the terms set out in this Public Ruling.*[89]

[84] Correspondence to FAC from Association of Mining and Exploration Companies, dated 19 May 2015: 1
[85] Correspondence to FAC from Association of Mining and Exploration Companies, dated 19 May 2015: 1
[86] Queensland Government, Queensland Treasury, Office of the State Revenue, Public Rulings
[87] Queensland Government, Queensland Treasury, Office of the State Revenue, Public Rulings
[88] Office of State Revenue, Public Ruling DA000.12.1, 27 June 2013
[89] Office of State Revenue, Public Ruling DA000.12.1, 27 June 2013

5.3 Definitions in the Public Ruling DA000.12.1 – Transfer duty – exemption for farm-in transactions in the resources sector

Queensland Treasury explained that the drafting of the provisions are in line with the eligibility criteria required under the Public Ruling (the Ruling).[90] The table below contains the common definitions in the Ruling which are relevant to this Bill. The full Ruling is outlined in Appendix D. Appendix E contains a summary comparison of the definitions contained in the Ruling and the Bill.

Public Ruling DA000.12.1 – Definitions[91]

5) The following terms are used in this Public Ruling.

b) Deferred farm-in agreement means an agreement between the farmor and another person (the farmee) which provides the farmee, after expending the exploration amount specified in the agreement, with a right to acquire an interest in the exploration authority that is:

i. specified in the agreement; and

ii. to be held jointly with the farmor.

e) A farm-in agreement means:

i. a deferred farm-in agreement; and

ii. an upfront farm-in agreement.

f) *Farmor* means the person who is the registered holder of an exploration authority or a person who has lodged with the Department of Natural Resources and Mines an application to be a registered holder of an exploration authority that has been approved.

j) Upfront farm-in agreement means an agreement between the farmor and another person (also the farmee) which provides for the immediate transfer of an interest in the exploration authority and, subject to expending the exploration amount by the date specified in the agreement (the expenditure completion date), entitles the farmee to retain the interest in the authority that is:

i. specified in the agreement; and

ii. to be held jointly with the farmor.

5.4 Proposed new Section 84A

Proposed new Division 1 outlines some basic concepts about farm-in agreements. Proposed new section 84A defines who is a farmor as follows:

84A Who is a farmor

(1) A ***farmor*** is –

(a) a person to whom an exploration authority, is granted under the relevant Act for the authority, even if the person is yet to be registered as the holder of the authority under that Act; or

(b) another person to whom the exploration authority has been transferred under the relevant Act for the authority, even if the other person is yet to be registered as the holder of the authority under that Act.

(2) For subsection (1), the relevant Act for an exploration authority is the Act under which the authority is granted.

The explanatory notes specify that persons to whom an exploration authority has been granted or transferred with all necessary approvals under a relevant Act for the authority is known as the 'farmor'. The explanatory notes also state that a person who is merely an applicant for the grant of such an interest is not covered.[92] The 'farmee' is the other party with the specified interest in the exploration authority.

[90] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 25
[91] Office of State Revenue, Public Ruling DA000.12.1, 27 June 2013
[92] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 31

In the examination of the (lapsed) *Revenue and Other Legislation Amendment Bill 2014*, the former Committee asked QTT to clarify the reasons for the terms 'farmor' and 'farmee'. QTT advised that those terms are common for the resources industry. The department explained:

> *In terms of the resource industry, they recognise themselves as the farmor and the farmee in terms of who is farming in and who is being farmed in. They are very much terms of art in that particular industry sector.*[93]

The department added that those terms are consistent with language used widely throughout the Duties Act, for example 'transferor' and 'transferee' and 'lessor' and 'lessee' to identify each party.[94]

Total GLNG submitted that the definition of 'farmor' in the Bill should be expanded to include a person who has applied for, but not yet been granted, an exploration authority.[95] Total GLNG explained that in the industry usually the farmor (e.g. smaller exploration companies) would attempt to secure the involvement of a farmee (who is typically a well-resourced and technically capable entity) as early as possible in the exploration project. This may often be during the application phase and the farm-in agreement remains non-binding and conditional upon the grant of the authority.[96]

The Committee asked Total GLNG if there was any way their concerns about the definition of 'farmor' could be addressed. Total GLNG suggested that an approved applicant for an exploration authority should also be included in the idea that that person was a farmor.[97]

QLS explained that the main purpose of the concession is to encourage investment at an early stage to enable miners to develop tenements.[98] QLS suggests that early investment opportunities in exploration activities may be impacted by the limited definition of a 'farmor' in proposed new section 84A of the Bill.[99]

The QLS advised the Committee that:

> *It must be remembered that the one key feature of all farm-in agreements is a requirement that money is spent on exploration and development, rather than simply paying a purchase price for an interest in a resource authority to an existing holder. This is a common commercial way to share risk between the authority holder (who typically has limited financial resources) and production companies (who are typically risk adverse). Unlike a usual transaction, the funds subject to a farm-in arrangement primarily benefit the resource rather than the authority holder.*[100]

The definition of farmor in the Ruling currently includes

> *…a person who has lodged with the DNRM an application to be a registered holder of an exploration authority that has been approved.*[101]

QLS explained that excluding person/s not yet granted an exploration authority from qualifying for the concession (even if the application is subsequently granted) will result in potential farmees deferring from investing in exploration projects and the farmor foregoing expertise from the farmee in respect to the planning phase of the exploration activity.[102]

[93] Ms Kross, Queensland Treasury and Trade, Public Briefing Transcript 16 December 2014: 8
[94] Ms Goli, Queensland Treasury and Trade, Public Briefing Transcript 16 December 2014: 8
[95] Total GLNG, Submission 2: 2-3
[96] Total GLNG, Submission 2: 2-3
[97] Mr Bird, Transcript 6 May 2015 (1): 7
[98] Mr Johnston, Transcript 6 May 2015 (1): 6
[99] Queensland Law Society, Submission 17: 4
[100] Correspondence to FAC from Queensland Law Society, dated 19 May 2015: 2
[101] Office of State Revenue, Public Ruling DA000.12.1, 27 June 2013
[102] Queensland Law Society, Submission 17: 4

QLS stated:

> *From a policy perspective, there does not seem any good reason to limit it to the situation once it has been granted. As long it is granted, it should be sufficient to cover the application as well.*[103]

Total GLNG agreed that the involvement of the farmee at the earliest possible stage, for example during the application phase, reduced the perceived risk of the exploration project and increases market confidence in the project's potential success. The company submitted that a farmee's early involvement into a project would accelerate exploration investment.[104]

Total GLNG clarified:

> *If it is pre or post the grant of the authority, it is a material cost on top of the investment cost that you are already making, which is a cost that will be borne no matter whether the exploration is a success or not. We may not have quite the one in 1,000 that we heard earlier but, still, exploration for oil and gas is a very high-risk game. So to act early and have a duty impost, or act later and have no impost, is driving a behaviour that would seem, as previously stated, to be inconsistent with the policy objective, which is to secure early exploration, early development and, therefore, early revenues for both the companies and the state.*[105]

Queensland Treasury stated that there is no need for the concession on agreements entered into at the pre-grant stage. The department explained:

> *This is because the agreement is not dutiable (as there is no dutiable property in existence) and therefore the farm-in concession cannot operate to delay liability for duty on the agreement until a transfer of an interest in an exploration authority occurs. Under these agreements, the first occasion duty arises is when the actual transfer occurs. At this point, issues relating to the speculative nature of the transactions, and the timing and valuation issues to which the concession is directed, do not arise.*[106]

The Committee sought additional information and clarification from the department in regards to the concerns outlined by the various stakeholders. The department advised that farm-in concession is an agreement-based concession, rather than a transfer-based concession. Therefore, an agreement made in relation to an application for the grant of an exploration authority is not dutiable as no dutiable property exists at that time.[107]

The department emphasised:

> *That is, the parties have moved away from an entirely speculative, exploratory position to a position of greater certainty where some commercial viability of a tenement has been established, allowing the parties to proceed with the transfer. The transfer will therefore be subject to duty in accordance with Government policy to tax transfers of exploration authorities and in accordance with the general duty framework for transfers of dutiable property.*[108]

[103] Mr Johnston, Transcript 6 May 2015 (1): 6
[104] Total GLNG, Submission 2: 2-3
[105] Mr Sutherland, Transcript 6 May 2015 (1): 6
[106] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 4
[107] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 10
[108] Correspondence to FAC from Queensland Treasury, dated 15 May 2015 (attachment 2): 1

Queensland Treasury explained that it would be inconsistent with the general duties liability framework. The department emphasised that extending to cover pre-grant agreements:

> *…would require a fundamentally different concession model, or expansion of duty liability to all applications (none currently liable).*[109]

5.5 Committee comments

Whilst the Committee was cognisant of wishing to encourage farmee and farmor involvement at an early stage, it does not consider that the wording in proposed section 84A precludes this. The Committee accepts Queensland Treasury's explanation that an agreement made at the application stage is not dutiable.

However, the Committee believes that there is clearly a need for better communication and consultation on Queensland Treasury's part. The Committee considers that the whole process would have been significantly improved had Queensland Treasury better understood the needs of stakeholders and undertaken more timely and directed consultation. The stakeholders involved in this process are in the business of exploration and generally operate within both tight budgets and timeframes. They would not usually have an understanding of how the Duties Act applies, particularly as they have not been subject to the duty regime prior to 2012.

The Committee considers that Queensland Treasury needs to provide additional explanations and education to sector participants, written in plain English and in a language that is easily understood by stakeholders, to ensure that they are fully aware of the how and why the concession applies as it does.

The Committee recommends that Queensland Treasury undertake an education and awareness campaign providing detailed explanations about how the concession operates, including examples. This education and awareness campaign should include further explanations around the issues raised during the course of the Committee's inquiry.

Recommendation 1

The Committee recommends that Queensland Treasury undertake an education and awareness campaign providing detailed explanations about how the concession operates.

[109] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 10

5.6 Proposed new sections 84B and 84C

Proposed new sections 84B and 84C define the terms 'upfront farm-in agreement' and 'deferred farm-in agreement' as follows:

84B What is an *upfront farm-in agreement*

(1) An ***upfront farm-in agreement*** is a written agreement entered into by a farmor and another person (the ***farmee***) in relation to an exploration authority, under which -

(a) the farmor must make 1 or more transfers to the farmee of a stated interest in the exploration authority, each interest being less than 100% of the total interest in the authority; and

(b) on the transfer of each interest, the interest is held by the farmee subject to the farmee spending a stated amount (an ***exploration amount***) on relevant exploration or development -

(i) after the agreement is entered into; and

(ii) on or before the expenditure completion date for the amount; and

(c) the farmee must, if the obligation under the agreement mentioned in paragraph (b) is not complied with for the interest transferred, transfer the interest back to the farmor.

(2) However, if the farm-in agreement is a 100% transfer farm-in agreement, the last interest in the exploration authority to be transferred under the agreement need not be held by the farmee subject to an obligation mentioned in subsection (1)(b).

84C What is a *deferred farm-in agreement*

(1) A ***deferred farm-in agreement*** is a written agreement entered into by a farmor and another person (the ***farmee***) in relation to an exploration authority, under which -

(a) the farmee is entitled to 1 or more transfers from the farmor of a stated interest in the exploration authority, each interest being less than 100% of the total interest in the authority; and

(b) the entitlement to each transfer arises only if the farmee spends a stated amount (an ***exploration amount***) on relevant exploration or development -

(i) after the agreement is entered into; and

(ii) on or before the expenditure completion date for the amount.

(2) However, if the farm-in agreement is a 100% transfer farm-in agreement, the last interest in the exploration authority to be transferred under the agreement need not be subject to an obligation mentioned in subsection (1)(b).

Proposed new section 84B(1) sets out the features an agreement must contain in order to qualify as an upfront farm-in agreement and subsection (2) outlines a qualification to the criteria in subsection (1) for a farm-in agreement which is a 100 per cent transfer farm-in agreement.[110]

The explanatory notes state that farm-in agreements occur in the mineral and petroleum resource sectors and are used to share the risk associated with exploration activity. In general, in a farm-in agreement, the holder of an exploration authority grants to another party the right to earn a specified interest in the exploration authority by spending a specified amount for the exploration and development of the exploration authority by a stated date.[111]

The explanatory notes outline two types of qualifying farm-in agreements – upfront agreements and deferred farm-in agreements. The explanatory notes also specify:

> *The distinction relates to whether payment of an exploration amount is a pre-condition or condition subsequent to the transfer to the farmee of each interest in the exploration authority under the agreement.*[112]

[110] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 31
[111] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 8
[112] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 9

The explanatory notes state:

> *Under either type of agreement, there may be multiple interests transferred (for upfront) or transferrable (for deferred) in the specified exploration authority. However, for simplicity of administration, all transfers under an agreement must meet the qualifying criteria for a single type of farm-in agreement. Hybrid agreements which have some transfers with payment of the exploration amount as a pre-condition and others as a condition subsequent, will not qualify for the concession.*[113]

QLS submits that the definition of a farm-in agreement in the Bill differs from the current definition in the Public Ruling.[114] Total GLNG agreed that the term farm-in agreement in the ruling is defined to include a deferred farm-in agreement and an upfront farm-in agreement. They stated that 'the Bill defines farm-in agreement as a deferred farm-in agreement or an upfront farm-in agreement'.[115] Total GLNG considered that the use of the word 'and' in the ruling indicates that access to the concession was not intended to be dependent on the farm-in agreement being characterised as either an upfront agreement or a deferred agreement.[116]

QLS suggested that the inconsistency between the Ruling and the Bill:

> *…may have a negative effect on Queensland's reputation as a stable regulatory environment.*[117]

The Committee asked QLS to clarify their concerns. They advised that there has been a reliance on the ruling over the last two years. They explained that the change in the definition of a farm-in agreement being to 'either/or' but not an 'and', would be to the detriment of the state as miners have relied on the Public Ruling in their forward plan.[118]

Queensland Treasury explained that since the publication of the Ruling, there have only been two transactions identified which were rendered ineligible because the agreement was entered into before the exploration authority had been granted. The department advised that one of those transactions would have been ineligible as a hybrid agreement.[119]

The department stated:

> *Until this Committee process, no submissions that the concession should apply to either pre-grant agreements, other than for one of the above transactions, or hybrid agreements at all, had been received since the publication of the Ruling, or indeed at any time.*[120]

They further advised:

> *While the industry submissions to Committee indicate hybrid agreements are common, OSR experience does not confirm this.*
>
> *All farm-in transactions must be lodged for Commissioner assessment – whether or not the concession applies. Therefore, it would be anticipated that statistics on farm-in agreements lodged with OSR are representative of what is occurring in practice. No agreements lodged with OSR which were entered since publication of the Ruling have been hybrid agreements.*[121]

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[113] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 9
[114] Queensland Law Society, Submission 17: 5
[115] Total GLNG, Submission 2: 5
[116] Total GLNG, Submission 2: 5
[117] Queensland Law Society, Submission 17: 5
[118] Mr Johnston, Transcript 6 May 2015 (1): 9
[119] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 3
[120] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 3
[121] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 6

Queensland Treasury advised that the department does not consider the Ruling allows the concession to apply to hybrid agreements, and there are a number of indicators in the separate treatment of upfront and deferred farm-in agreements in the Ruling, making it transparent that it does not apply to hybrid agreements. They noted that in defining a concession for practical reasons it is typical to stipulate eligibility requirements, not seek to list all non-eligible transactions. The department emphasised that the Ruling has never been applied to allow the concession on hybrid agreements.[122]

The QRC subsequently advised the Committee:

> *OSR's assertion that hybrid farm-ins are not common "in their experience' does not fill industry with confidence, given that their experience is limited to administering a ruling they have designed to preclude hybrid farm-ins, over the past two years.*[123]

AMEC also subsequently advised the Committee that it:

> *…disagrees that OSR "experience" provides validity of the proposed system. AMEC has represented the needs of mineral explorers, exposed to tax systems across the globe for over 30 years, and disagrees that hybrid or outcome based farm-ins are uncommon. It is highly likely that farm-in agreements have been structured to fit the exemption in an attempt to reduce costs in this difficult time for the exploration industry rather than what would be typical industry practice.*
>
> *In other words, companies are forced to frame their commercial agreements in multiple farm-ins, in order to get an exemption. This would increase advisor fees, increasing costs to companies rather than encouraging them to explore.*[124]

The issue of hybrid agreements is considered further in section 5.11 of this report relating to the concessional treatment of transfer duty for farm-in agreements.

QRC also advised the Committee of their concerns over the wording in sections 84B(1)(b) and 84C(1)(b) and suggested that the Bill may inadvertently discourage outcome focussed farm-ins.[125] The Committee sought an explanation from QRC as to what they mean by outcome focussed farm-ins. QRC outlined that the Ruling has provided a concession for the farm-in process.[126]

They stated:

> *What the bill does, as Bernie described, is to try to drive it to both ends of that farm-in process. So it is either entirely front-ended or entirely back-ended, and in the middle at the moment what you have is a rich body of industry practice where it may well be that that farm-in interest is earned based on an outcome. So it may well be that, once you reach native title agreement or once you have a land access agreement or once you have done a feasibility on how you are going to get the drill rigs on site, then that is the trigger, rather than what the bill anticipates is a very kind of cut-and-dried financial analysis of: 'Here's what you are purchasing at this point in time in return for that amount of money.' The risk is that, by focusing on the amount of money and by trying to drive the farm-in transactions that are eligible for a concession to either up-front or ex post, you miss all of that middle ground.*[127]

[122] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 6
[123] Correspondence to FAC from Queensland Resources Council, dated 19 May 2015:
[124] Correspondence to FAC from Association of Mining and Exploration Companies, dated 19 May 2015: 2
[125] Queensland Resources Council, Submission 14: 2
[126] Mr Barger, Transcript 6 May 2015 (1): 7
[127] Mr Barger, Transcript 6 May 2015 (1): 7

QRC emphasised that the amendments are inconsistent with the current ruling and with existing practice where there are often agreements based on outcomes. In practice, there may not be a definitive percentage in return for a set investment of money, but there could other activities that could be considered part of a farm-in arrangement. The QRC is concerned that the amendments will penalise small exploration companies because in finding promising results in the exploration, they would have to seek higher level of legal resources for their farm-in agreements rather than rely on a more informal outcomes focussed process.[128]

Queensland Treasury explained that the eligibility requirement for the concession in the proposed amendments, that the transfer must be conditional on payment of a stated amount, correlates directly to the existing requirements of the Ruling.[129] They stated:

> *Transfer duty is imposed on consideration or unencumbered value for a dutiable transaction, whichever is the greater. Calculation of duty is a mathematical exercise involving the application of a rate of duty to the dollar amount of consideration or unencumbered value. As such it requires the consideration to be expressed as an amount and not as a concept.*[130]

The Committee asked the department to provide further clarity. The department advised:

> *To ensure taxpayer certainty on this issue, the OSR will publish a Public Ruling confirming this approach including clear examples of what is considered to be ascertainable (e.g. 200 metres of reverse circulation drilling) as opposed to solely milestone or outcome based (e.g. completion of a preliminary engineering design for mine and infrastructure).*[131]

QRC submitted that the Bill requires that a farm-in agreement specifically provide for the spending of a stated amount to become entitled to a transfer of an interest. They stated:

> *The Bill may inadvertently discourage 'outcome focussed' farm-ins, as it requires that a farm-in agreement specifically provide for the spending of a 'stated amount' to become entitled to a transfer of an interest.*
>
> - *QRC recommends that this ambiguity in the Bill could be addressed to ensure that these outcome focussed farm-ins are recognised by amending the reference to 'stated amount' or 'exploration event' in sections 84B(1)(b) and 84C(1)(b) to encompass; '[spending] an amount to achieve a stated milestone or task', or 'a minimum amount to achieve a particular milestone or task or a stated amount.'*[132]

QLS agreed that the term 'stated amount' is constrictive and reduces the flexibility that all parties have in negotiating a farm-in agreement. QLS stated that flexibility is often required for negotiations of the tenement and financial situation particularly for junior miners.[133]

[128] Mr Barger, Transcript 6 May 2015 (1): 7
[129] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 18
[130] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 18
[131] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 8
[132] Queensland Resources Council, Submission 14: 2
[133] Mr Paterson, Transcript 6 May 2015 (1): 8

QLS explained that the Bill requires that a farm-in agreement specifically provides for the spending of a stated amount to become entitled to a transfer of interest. In addition, QLS suggests:

> *It is not uncommon for a farmee to undertake certain tasks or achieve certain milestones, such as producing a bankable feasibility study, in order to become entitled to the transfer of an interest in the exploration authority. Where all the work done or money spent meets the definition of 'exploration amount', it would be reasonable for such an arrangement to qualify for the concession proposed under the Bill. However, the Bill requires that a farm-in agreement specifically provides for the spending of a 'stated amount' to become entitled to a transfer of an interest. Further, it is unclear if a stated amount in a farm-in agreement can be a 'minimum' or something other than an exact amount.*[134]

Queensland Treasury responded:

> *Transfer duty is imposed on consideration or unencumbered value for a dutiable transaction, whichever is the greater. Calculation of duty is a mathematical exercise involving the application of a rate of duty to the dollar amount of consideration or unencumbered value. As such it requires the consideration to be expressed as an amount and not as a concept.*[135]

Queensland Treasury considered that the existing wording of the legislation would not preclude an agreement from qualifying if the parties stipulate related milestones or tasks in addition to the stated amounts. The department explained that this approach to be common in both Queensland and other jurisdictions. The department also stated that the wording in the Bill would not preclude an agreement which outlines the minimum amount to be spent therefore that is still a stated amount.[136]

They advised:

> *OSR currently manages these types of agreements under the existing arrangements on the basis that the concession will be allowed in circumstances where a dollar amount is not stated for the completion of a particular outcome, the amount in relation to the outcome is able to be calculated by reference to objective and ascertainable evidence. However, solely milestone or outcome based agreements do not qualify.*[137]

AMEC advised the Committee:

> *AMEC understands the process that OSR currently undertakes in assessing each agreement on a case-by-case basis. This does not provide certainty for investors and would hinder farm-in negotiations as there will be a potential cost pending.*
>
> *It is also hard to recognise the conditions for the exemptions as well-established, as claimed by Treasury as they have only operated for one financial year and been tested in only one case. Should the system remain unchanged, AMEC would support the publication of guidance material on this form of farm-in as outcome based farm-ins should still be considered an option for explorers without incurring additional costs.*[138]

[134] Queensland Law Society, Submission 17: 2-3
[135] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 18
[136] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 18
[137] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 8
[138] Correspondence to FAC from Association of Mining and Exploration Companies, dated 19 May 2015: 2

The QRC's submission also stated section 84B(1)(c) and section 84C(1)(b) is drafted in too binary a manner. They considered that current industry practice allows for the farmee to earn a pro rata interest based on the amount actually spent compared with the stated amount spent set out in the farm-in agreement. The QRC explained that this would be more consistent with the Australian Taxation Office's approach to its rulings on farm-in and farm-out agreements.[139]

The Committee asked QLS and the QRC to provide an explanation and to highlight industry practice examples. QLS explained:

> *Again, continuing on with the theme of flexibility and having regard to the quality of the tenement that is found during the exploration phase, you could, for example, have a situation where the original agreement is that $3 million would be spent to do significant exploration. However, after $1.5 million is spent they suddenly find themselves in a very different phase in which they can progress to the next level towards a production tenement and it would make no sense then to continue spending the $3 million just to qualify for the concession. Rather, it may make much more sense for the interest to be reduced that is farmed in having regard to the fact that only half the amount of money was spent to get to that point.*[140]

QRC stated that the Bill would encourage a farm-in arrangement to have an amount that is fixed. They explained that at present, the Bill is drafted in such a way that if the exact dollar amount is not spent, then the farm-in is not activated. They stated:

> *…when in actual fact at the time the farm-in agreement was made that may well have been an estimate based on what they knew at the time and as they come closer to that point it may well be that the exploration has been less expensive, more efficient, more productive, they have reached the target that both parties are interested in and the bill denies them the flexibility to make that farm-in proceed. It is about reflecting the operational arrangements of what is happening on the ground rather than necessarily fixating on a dollar estimate and hardwiring it into the process.*[141]

The QRC explained that a staged process is also quite common in the industry. They stated that this is based on an initial farm-in for a small amount then contingent on outcomes, the increase in the farm-in can increase over time. The QRC emphasised that this process is important for funding the small exploration companies both directly and in their equity raising.[142]

QLS also submitted:

> *…industry practice for farm-in arrangements includes arrangements that allow the farmee to earn a pro rata interest based on the amount spent compared to the 'stated amount' set out in the farm-in agreement*.[143]

They stated that sections 84B(1)(c) and 84C(1)(b) should be amended to fall in line with industry practice that allows for a transfer or a retention of a pro rata interest when only a proportion of the stated amount is spent.[144]

[139] Queensland Resources Council, Submission 14: 2
[140] Mr Paterson, Transcript 6 May 2015 (1): 8
[141] Mr Barger, Transcript 6 May 2015 (1): 8
[142] Mr Barger, Transcript 6 May 2015 (1): 9
[143] Queensland Law Society, Submission 17: 6
[144] Queensland Law Society, Submission 17: 6

Queensland Treasury explained that eligibility for pro-rata transfers was raised and considered during the consultation on the concession model leading to the Ruling.[145] They advised that the imposition of duty occurs when the agreement for transfer is entered into. The department stated that the concession reduces the impacts of duty at the time the agreement is entered into. They explained that in both farm-in agreements and all other agreements for the transfer of dutiable property, the duty consequences of a variation of the agreement will depend upon the status of the variation at general law.[146]

The department outlined that in the case of the QLS example:

> *….the contemplated use for pro-rata application of the concession is where the parties determine the land will support a production tenement before the stated exploration amount is fully spent, to allow transfer without full spend on exploration. In that case, allowing pro-rata application of the concession on a renegotiation of the agreement would not be consistent with one of the major purposes of the concession, which is to limit exposure to duty on agreements over speculative interests. When renegotiating in the circumstances described, the interest is no longer speculative, and the concession is no longer required or appropriate.*[147]

5.7 Committee comments

The Committee is satisfied that the definitions of up-front and deferred farm-in agreements adequately address the qualification criteria and are consistent with the Ruling. The issue of hybrid agreements is discussed further in section 5.11 of this report.

With regard to stakeholders suggestions that the Bill is inconsistent with industry practice of outcomes based agreements. The Committee agrees with Queensland Treasury that the assessment of duty is a mathematical exercise and purely outcomes based agreements would make the assessment of duty impractical. The Committee notes Queensland Treasury's response that agreements can be a combination of both stated amount and outcomes and still be eligible for the concession.

The Committee also notes Queensland Treasury's commitment to publish a Public Ruling confirming the administrative approach to be taken including clear examples of what is considered to be ascertainable as opposed to solely milestone or outcome based, to ensure taxpayer certainty regarding this issue.

Whilst it may be common industry practice to allow variations on a pro rata basis, the Committee considers that variations would usually occur when a decision has been made to either move to the next phase of production or to cease the agreement. To allow pro rata application of the concession when this occurs is contrary to the purpose of allowing the concession in the first place. The Committee considers that it is appropriate that pro rata concessions not be included.

Recommendation 2

The Committee recommends that Queensland Treasury prepare and publish a Public Ruling confirming the administrative approach to be taken, including clear examples of what is considered to be ascertainable as opposed to solely milestone or outcome based, to ensure taxpayer certainty in regard to outcomes based agreements.

[145] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 19
[146] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 9
[147] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 9

5.8 Proposed new sections 84D, 84E and 84F

The explanatory notes outline the following proposed new sections:

Section 84D defines the term 100% transfer farm-in agreement.[148]

> **84D What is a *100% transfer farm-in agreement***
>
> A *100% transfer farm-in agreement*, for an exploration authority, is a deferred farm-in agreement or upfront farm-in agreement under which, on the completion of all the transfers of interests in the exploration authority that are proposed to be made by the farmor under the agreement, 100% of the interest in the exploration authority will be held by the farmee.

The explanatory notes clarify that under those sections, an agreement can still qualify as a farm-in agreement where its performance results in 100 per cent of the interest in the exploration authority being held by the farmee. However, the transfer which results in the farmee holding 100 per cent of the total interest in the exploration authority does not receive the benefit of the farm-in concession, as a consequence of the operation of section 84I.[149]

Section 84E provides a definition of expenditure completion date and ECD variation.[150]

> **84E What is the *expenditure completion date* and an *ECD variation***
>
> (1) The *expenditure completion date* for an exploration amount for the transfer of an interest in an exploration authority under a farm-in agreement is -
>
> (a) the day stated in the agreement on or before which the exploration amount must be spent; or
>
> (b) if the farmor and farmee agree to vary the day mentioned in paragraph (a) - the day as varied; or
>
> (c) if the day mentioned in paragraph (b) is further varied - the day as further varied.
>
> (2) A variation mentioned in subsection (1)(b) or (c) is an *ECD variation*.

The explanatory notes outline that the *expenditure completion date*, for an exploration amount for the transfer of an interest in an exploration authority under a farm-in agreement, is defined as the day stated in the agreement on or before which the exploration amount must be spent, and any variation or further variation to that day agreed by the farmor and farmee. Any such variation or further variation is an *ECD variation*.[151]

Section 84F provides a definition of relevant exploration or development as used in the qualifying conditions for both upfront and deferred farm-in agreements under sections 84B and 84C respectively.[152]

> **84F What is *relevant exploration or development***
>
> Exploration or development is ***relevant exploration or development*** for an exploration amount relating to an interest in an exploration authority the subject of a farm-in agreement if -
>
> (a) the exploration or development is comprised of, or associated with, the carrying out of an activity under the exploration authority; and
>
> (b) all of the exploration or development is carried out after the farm-in agreement is entered into.

[148] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 32
[149] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 32
[150] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 32
[151] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 32
[152] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 32

The explanatory notes stated that exploration or development will be relevant exploration or development for an exploration amount relating to an interest in an exploration authority the subject of a farm-in agreement if it is comprised of, or associated with the carrying out of an activity under the exploration authority, after the farm-in agreement is entered into. The explanatory notes outlines examples to include drilling, sampling, geological surveys and geological evaluations and assessments for the exploration authority. However, it would not include bankable feasibility studies, rates, or legal, administration or management costs.[153]

5.9 Division 2 Transfer duty for farm-in agreements – Proposed new sections 84G, 84H and 84I

The explanatory notes state that division 2 of new part 8A outlines the dutiable transaction for farm-in agreements and the duty treatment of particular transactions under a farm-in agreement.[154]

Proposed new sections 84G, 84H and 84I are as follows:

84G Farm-in agreement is an agreement for the transfer of dutiable property

(1) A farm-in agreement is an agreement for the transfer of dutiable property mentioned in section 9(1)(b).

(2) Section 21 does not apply in relation to the agreement.

84H Exemption - particular transfers to farmor under upfront farm-in agreement

If transfer duty imposed on an upfront farm-in agreement is paid, no transfer duty is imposed on a transfer of an interest in the exploration authority from the farmee to the farmor made because of the obligation mentioned in section 84B(1)(c).

84I Exclusion of s 22(2) for particular dutiable transactions under farm-in agreement

Section 22(2) does not apply to the transfer of an interest in an exploration authority if -

(a) both of the following apply -

(i) the transfer is made under a 100% transfer farm-in agreement; and

(ii) the transfer results in the farmee holding 100% of the interest in the exploration authority; or

(b) the interest is transferred to the farmee for a deferred farm-in agreement, even though the farmee has failed to spend all or part of the exploration amount for the transfer under the agreement in the way mentioned in section 84C(1)(b).

[153] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 32
[154] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 32

Proposed new section 84G of the Bill outlines that a farm-in agreement is an agreement for the transfer of dutiable property mentioned in section 9(1)(b). Section 9 defines dutiable transaction as follows:

> **9 What is a *dutiable transaction***
>
> (1) Each of the following is a ***dutiable transaction*** –
>
> (a) a transfer of dutiable property;
>
> (b) an agreement for the transfer of dutiable property, whether conditional or not;
>
> (c) a surrender of dutiable property that is land in Queensland or a transferable site area;
>
> (d) a vesting of dutiable property -
>
> (i) by, or expressly authorised by, statute law of this or another jurisdiction, whether inside or outside Australia; or
>
> (ii) by a court order, of this or another jurisdiction, whether inside or outside Australia;
>
> (e) a foreclosure of a mortgage over dutiable property;
>
> (f) an acquisition of a new right on its creation, grant or issue;
>
> (g) a partnership acquisition;
>
> *Note* –
>
> See chapter 2, part 7 (Dutiable transactions relating to partnerships).
>
> (h) the creation or termination of a trust of dutiable property;
>
> *Note* -
>
> See chapter 2, part 8 (Dutiable transactions relating to trusts), division 3 (Creation and termination of trusts).
>
> (i) a trust acquisition or trust surrender.
>
> *Note* -
>
> See chapter 2, part 8 (Dutiable transactions relating to trusts), division 4 (Some basic concepts about trust acquisitions and trust surrenders).

QLS submitted their concerns about section 84G, citing an old ruling issued by the then New South Wales Chief Commissioner of Stamp Duties. The NSW Chief Commissioner of Stamp Duties stated that:

> *…a farm-in agreement where the farmee has a right to withdraw is not in fact assessable as an agreement for sale (transfer).*[155]

QLS considered that if that is the case, a farm-in agreement is likely to be the grant of a new right under section 9(1)(f) and not an agreement for transfer. QLS sought clarification as to whether section 84G(1) is a deeming provision or is a purported statement of the law. QLS recommended that section 84G(1) provide that farm-in agreement is not considered as a 'new right'.[156]

[155] Queensland Law Society, Submission 17: 3-4
[156] Queensland Law Society, Submission 17: 3-4

The Committee informed the QLS that Queensland Treasury stated that section 84G was drafted as a deeming provision.[157] The department also drew attention to page 32 of the explanatory notes which stated:

> *Section 84G, subsection (1), clarifies that both an upfront farm-in agreement and a deferred farm-in agreement are an agreement for the transfer of dutiable property mentioned in section 9(1)(b), and cannot be characterised as any other dutiable transaction (for example, the acquisition of a new right). Given subsection (1), the Commissioner of State Revenue's discretion under section 21 will have no operation. This is confirmed by subsection (2).*[158]

QLS iterated their concern that the explanatory notes are an aid to interpretation and not the law itself and they would prefer to see a change in the wording of the legislation. They explained that 'there is always a risk when there is an ambiguity', which raises the question 'as to how a court would have regard to those explanatory notes in interpreting the legislation.[159]

Queensland Treasury confirmed that once enacted, the provision will be law and considered that there is no ambiguity to be resolved.[160]

5.10 Committee comments

The Committee is not convinced that the issue raised by QLS is sufficiently clear. The Committee recommends that the Minister consider the issues raised by QLS and contemplate whether amendments are warranted to section 84G(1) to ensure that the meaning, as articulated in the explanatory notes, is clear.

Recommendation 3

The Committee recommends that the Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships consider the issues raised by the Queensland Law Society and contemplate whether amendments are warranted to section 84G(1) to ensure that the meaning, as articulated in the explanatory notes, is clear.

5.11 Division 3 Concession for transfer duty for farm-in agreements – Proposed new Section 84J

The explanatory notes also sets out the concessional arrangements which will apply for qualifying transactions.[161] Proposed new section 84J outlines how transfer duty is initially assessed on farm-in agreement as follows:

84J How transfer duty is initially assessed on farm-in agreement

(1) This section applies for assessing liability for transfer duty on a farm-in agreement.

(2) The dutiable value of a farm-in agreement is the consideration paid or payable to the farmor, or a related person of the farmor, for the farmor entering into the agreement, other than an exploration amount.

(3) Section 502(1)(a) and (b) and (2)(a) -

(a) applies in relation to the consideration mentioned in subsection (2); and

(b) does not apply in relation to any other consideration payable under the agreement

[157] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 27
[158] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 32
[159] Mr Paterson, Transcript 6 May 2015 (1): 10
[160] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 27
[161] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 8

The explanatory notes stipulate that under the amendments, transfer duty will initially be assessable when a farm-in agreement is entered into, as is the case for all agreements for transfer of dutiable property. The explanatory notes also outline that the Commissioner must reassess the agreement if certain "reassessment events" occur. In addition, for a deferred farm-in agreement, a reassessment event occurs if an interest in the exploration authority is transferred from the farmor to the farmee under the agreement.[162]

Total GLNG Australia submitted that they consider the policy rationale for limiting the concession to be unclear. They stated that in a case where the farmor has applied for, but not been granted an exploration authority at the time the agreement is entered into, the agreement will not qualify for the concession (even if the application is subsequently granted).[163] Total GLNG Australia explained:

> *Limiting the concession in the manner currently proposed essentially requires parties to defer entering into a farm-in agreement until after an authority has been granted, and prevents prospective farmors from securing exploration funding during the application phase….. We urge that consideration be given to expanding the Bill to enable agreements entered into during the application phase to qualify for the concession.*[164]

Total GLNG Australia emphasised that a point of contention will be the application of the concession in practice and identifying what constitutes part of the 'exploration amount' (which will be exempt from duty) compared to 'other consideration' which will be dutiable.[165]

Queensland Treasury explained that 'exploration amount' is an industry term which generally refers to money spent 'in ground' on actual exploration activities. The department outlined that neither the Ruling nor the Bill specifies the type of expenditure that constitutes an exploration amount.[166]

QRC stated that one of the problems of the Bill is that it complicates the process of transferring the information across from the farmee if they find something interesting in their exploration.[167]

The explanatory notes outline that all interest transfers under an agreement must meet the qualifying criteria for a single type of farm-in agreement.[168] The explanatory notes also define hybrid farm-in agreements as those which have some transfers with payment of the exploration amount as a pre-condition and others as a condition subsequent. The explanatory notes state that these types of agreements will not qualify for the concession.[169]

Total GLNG Australia have concerns about the limitations of the concession – that is, hybrid agreements not being eligible for concession. Total GLNG Australia advised that hybrid agreements are common in the oil and gas industry, as these agreements are put in place to ensure that the farmee has some legal interest in the permit and the joint venture from the beginning of the investment. They stated:

> *Limiting the concession so that it does not apply to these arrangements will severely undermine the likelihood of the concession applying to farm in arrangements in the oil and gas industry or require parties to these arrangements to alter their existing commercial practices. Neither is a desirable outcome.*[170]

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[162] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 11
[163] Total GLNG, Submission 2: 3
[164] Total GLNG, Submission 2: 4
[165] Total GLNG, Submission 2: 6
[166] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 6
[167] Mr Barger, Transcript 6 May 2015 (1): 11
[168] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 9
[169] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 9
[170] Total GLNG, Submission 2: 5

Total GLNG provided an example of a hybrid agreement:

> *The exploration opportunity that we have signed into, farmed into, in Western Queensland is with Australian company Central Petroleum. As part of that deal we have a phased entry where they will assign some equity and then we will do some work, which is an up-front agreement as I understand it as defined, and then at the back end, after three different phases, when we have completed the final phase of work they will then assign us a further amount of equity. For us, we want to be on title early so that (a) we are on title, (b) that gives us access as a joint venture partner to the Queensland government authorities and (c) it acts as a mitigate in case the farmor ever gets into financial difficulties so that we are there. For them, they do not want to assign us any interest until such time as we have fulfilled work. So you end up with this neat balance between what works for us and what works for them, but as defined our agreement is a hybrid agreement and therefore would not be eligible for the concession, whereas it makes commercial sense for both of us to go down that path.*[171]

Queensland Treasury stated that:

> *…the treatment in the Bill requiring a farm-in agreement to be either entirely upfront or entirely deferred to qualify for concession is consistent with the intended administrative practice communicated by the Ruling and the actual administrative practice to date.*[172]

Total GLNG Australia suggested that the proposed amendments must be fully consistent with the administrative arrangement under which concession has been administered by the OSR for the past 18 months.[173] They noted that there is presently nothing in the Ruling that states that the concession would not apply to hybrid agreements.[174] QLS agrees that the Bill amendments are a departure from the Ruling which does not prohibit hybrid arrangements from being eligible for the concession.[175]

Queensland Treasury emphasised that the Bill is consistent with the Ruling to limit the concession to entirely upfront, or entirely deferred farm-in agreements. The department explained that:

> *…the Ruling deals with upfront agreements and deferred agreements as separate concepts and with specific relief treatments for each type of agreement (see paragraphs 8 to 10 for deferred farm-in agreements and paragraphs 11 to 15 for up-front farm-in agreements).*[176]

The department also advised that:

> *…there is no evidence to suggest that the limitation of the concession will undermine the applicability or objectives of the concession or that entering into hybrid agreements is common industry practice.*[177]

They considered that all parties entering into commercial arrangements would take into account duty outcomes and possible exemptions and concessions available in choosing the most suitable structural arrangements.[178]

[171] Mr Sutherland, Transcript 6 May 2015 (1): 9
[172] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 9
[173] National Retail Association, Submission 3: 2
[174] Total GLNG, Submission 2: 5
[175] Queensland Law Society, Submission 17: 5
[176] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 29
[177] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 29
[178] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 29

QRC is concerned that those with farm-in agreements based on the public ruling have had assurances from the previous and current government that the concession would be consistent with the ruling. They stated:

> *An important drafting change from 'and' to 'or' means, again, you have that very binary result where it is either up-front or after the fact but not hybrid. That does not sit comfortably with the public ruling, so you have all the issues of people who have been making decisions in good faith or existing industry practice.*[179]

QRC advised the Committee that it is not questioning that OSR has set out to very deliberately draft the Bill as it was tabled. However, they are suggesting ways in which the drafting could be improved to better reflect both long-standing industry practice and industry's understanding of the policy intention of encouraging exploration in Queensland.[180]

AMEC considered that the framework of combined upfront and deferred farm in arrangements not qualifying for duty concession only creates more non-dutiable transactions. AMEC submitted that upfront and deferred farm-in arrangements can be treated as a separate right.[181]

Total GLNG Australia also noted that a farmor and farmee can enter into multiple farm-in arrangements for the same exploration authority. They explained that these parties can enter into an upfront agreement for one portion of the exploration authority and a separate deferred agreement for another portion for the same exploration authority. Total GLNG Australia suggests that because the transfers under each agreement are treated as either wholly upfront or wholly deferred, they are eligible for the concession. They stated:

> *…requiring parties to enter into separate agreements in order to access the concession would seem to run counter to the 'simplicity of administration' cited as the rationale for limiting the concession in the manner outlined in the explanatory notes.*[182]

Queensland Treasury stated that the approach of entering into separate agreements could be a practical solution to the industry as an alternative to entering into a hybrid agreement.[183] The department advised:

> *Parties who wish to agree to a mix of upfront and deferred elements can enter separate agreements, which will ensure each interest, and the consideration payable for it, are dealt with clearly, thereby limiting the complexity of administration and risk to revenue. Given OSR's experience that no farm-in agreements lodged with it since the publication of the Ruling on 27 June 2013 have been hybrid agreements, this is considered to be the most practical approach to this issue, and not unreasonably burdensome to taxpayers wishing to make these arrangements.*[184]

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179 Mr Barger, Transcript 6 May 2015 (1): 9
180 Correspondence to FAC from Queensland Resources Council, dated 19 May 2015: 2
181 Association of Mining and Exploration Companies Inc., Submission 11: 2
182 Total GLNG, Submission 2: 5
183 Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 6
184 Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 8

In response to Queensland Treasury's suggestion that parties could manage their affairs in such a way to qualify for the concession, QLS advised:

> *…we reiterate that farm-in arrangements are generally entered into at times when there is a shortage of cash flow and a high amount of risk. The extra expense on advisors to carefully draft such arrangements (solely for the benefit of the concession and not for any commercial reason) and to obtain advice on qualification is likely to outweigh the benefit in seeking the concession in the first place. In our view, the concession needs to be simple so that parties can negotiate the most sensible commercial outcome without needing to resort to expensive expert advice.*[185]

The Committee sought further clarification in this issue because it was concerned that stakeholders were being unnecessarily penalised. Queensland Treasury explained that liability arises when an agreement for transfer is entered into, with calculation of duty and time for lodgement and payment to the Commissioner all running from that date. The department emphasised when duty is for upfront farm-in agreements is different from that for deferred farm-in agreements, as the time at which the transfer occurs or becomes unconditional, is different for each type of agreement.[186]

The department provided the diagrams below in explanation of how the agreements work:

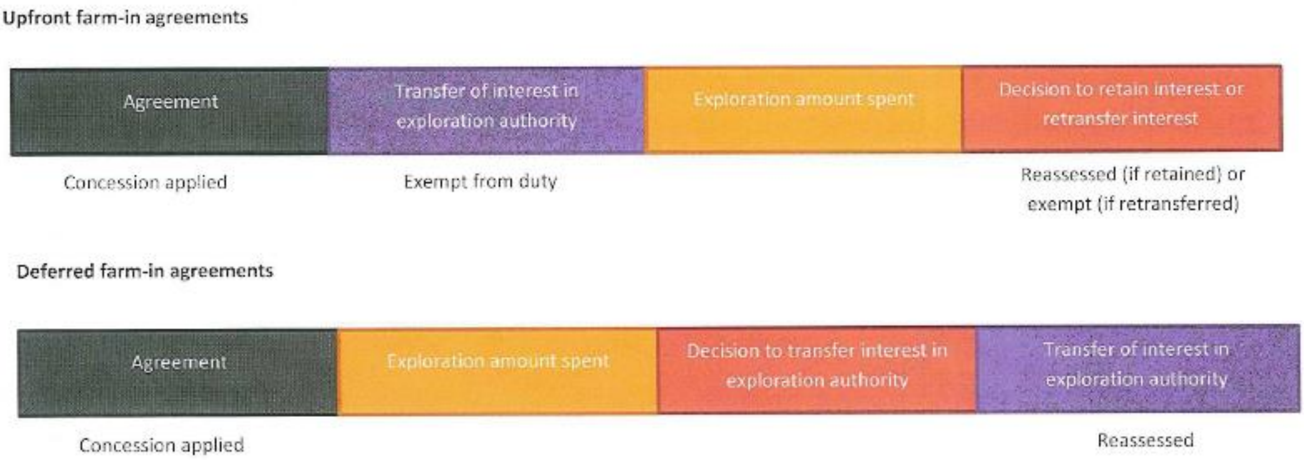

Figure 1: Application of farm-in concession. Source: Queensland Treasury[187]

Queensland Treasury also explained that 'exploration of tenures, which could comprise of a simple farm-in agreement between two parties to a multiple potential operation in multiple jurisdictions, involving multiple parties'. The department notes that these tenures and agreements are complex but all possible arrangements would need to be considered and taken into account.[188]

Queensland Treasury explained:

> *It is likely therefore that any amendments to fully cater for hybrid agreements would require a redesign of the concession, add further complexity to the legislation, and increase the burden of compliance, rather than being a simple amendment of the currently drafted provisions.*[189]

[185] Correspondence to FAC from Queensland Law Society, dated 19 May 2015: 5
[186] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 10
[187] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 10
[188] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 10
[189] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 10

They further advised:

> *Added revenue protection measures would also be required to ensure each hybrid component could be tested separately of the others and to ensure that there could not be any manipulation of the consideration for each interest to delay the requirement for duty to be paid on a retained upfront interest. Further, compliance requirements would need to ensure consideration could be strictly accounted for against the separate criteria, particularly given an upfront and deferred stage for separate interests could potentially overlap.*
>
> *In addition, the resource industry itself operates in a complex way. Exploration of tenures can encompass a range of arrangements including from a simple farm-in relating to a single tenure between two parties to complex farm-ins relating to multiple tenures, across multiple potential operations, in multiple jurisdictions, involving multiple parties. All possible arrangements would need to be considered and taken into account. Further the added revenue protection measures and compliance required as referred to above, may create significant burden on the parties as it may not reflect the way in which expenditure is recorded in relation to a particular operation, especially those that may involve multiple tenures and multiple parties. However, such evidence would be essential to ensure that revenue risk is managed and to address any avoidance opportunities.*[190]

QLS responded that simplicity is the key and they are concerned that this fundamental principle is not achieved by the provisions as a result of Queensland Treasury taking an unduly narrow approach. They advised:

> *…Treasury states that the provisions are not designed for all farm-in arrangements. The Society respectfully queries why that is the case. The Society agrees with Treasury that the concession should not apply to simple transfers of resource authorities, and do not consider any of the industry submissions to be stating otherwise. All that is required for an effective concession is to ensure that duty is not paid on such an exploration amount. In our view, the complexity derives not so much from the application of farm-in agreements to the Duties Act 2001 (Qld), but from the narrow approach to the concession.*[191]

QRC suggested that proposed new section 84J should be amended to exclude stamp duty on the consideration paid for mining information under a farm-in agreement.[192] In addition, they submitted that the entire farm-in transaction should be eligible for the concession when the farm-in agreement provides for a final transfer to the farmee on completion of the agreement bringing their interest to 100 per cent.[193]

QRC reiterated their concerns that the Bill unnecessarily complicates the process of transferring the geological information in that it is unclear what the stamp duty is applied to. They stated that the resource tenure is inextricably linked to the geological information and that the Bill treats the mining information 'as though it is an objective fact with a hardwired value that is very easy to levy a stamp duty on'. The QRC emphasises that 'the way the concession is framed (in the Bill) is not consistent with the way a full transfer of tenure works'.[194]

[190] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 7-8
[191] Correspondence to FAC from Queensland Law Society, dated 19 May 2015: 2
[192] Queensland Resources Council, Submission 14: 3
[193] Queensland Resources Council, Submission 14: 3
[194] Mr Barger, Transcript 6 May 2015: 11

QLS stated that it expects that payments made to the farmor under a farm-in agreement for mining information would not be considered as payments for the farmor entering the agreement. However, because the Ruling suggests otherwise, QLS has asked for clarification that this section does not cover 'payments made under the farm-in agreement for mining information is not dutiable property and is not subject to duty under any other type of transaction'.[195]

QLS explained:

> *The way the Duties Act is framed is that there are different types of dutiable transactions and dutiable property on which duty can be levied. That does not currently cover any form of information or know-how or anything like that. To attempt to bring that mining information into the duty almost by stealth here, by pretending that it is somehow dutiable because it is not exploration expenditure, is contrary to the entire policy behind the way the Duties Act operates.*[196]

Queensland Treasury explained that the issue of extending the concession by excluding duty on mining information had been raised during previous consultation on the concession model. The department advised that the removal would compromise the existing concession model and potentially require a fundamentally different model.[197]

5.12 Committee comments

The Committee considers that the concession included in the provisions is designed to reflect the majority of agreements. It considers that to include hybrid agreements in the concessional arrangements risks imposing a significant administrative burden on the sector as a whole in order to accommodate a minority of agreements. The Committee considers that where a hybrid arrangement is contemplated, the simplest option is for that agreement to be split in order for it to become eligible for the concession. If a hybrid agreement is the preferred option of the parties, the provisions do not preclude the parties from entering into these types of arrangements, however, they will not be eligible for the concession.

The Committee also considers that it is not a simple option to just allow hybrid agreements under the existing provisions. Allowing concessional treatment of hybrid agreements would involve separate administrative arrangements in order to prevent them being used as duty avoidance vehicles.

However, considering the evidence provided to the Committee indicates that hybrid agreements were common practice in the industry and the concessional treatment of these agreements remains an area of confusion for stakeholders, the Committee considers that Queensland Treasury should provide additional advice to the industry.

The Committee considers that these issues should be included in the education and awareness campaign providing detailed explanations about how the concession operates as recommended in Recommendation 3 above.

[195] Queensland Law Society, Submission 17: 8
[196] Mr Johnston, Transcript 6 May 2015 (1): 11
[197] Correspondence to FAC from Queensland Treasury, dated 15 May 2015 (attachment 2): 1

5.13 Division 4 Lodgement and notice requirements for upfront farm-in agreements – proposed Section 84K

The amendments in the Bill also introduce two new lodgement/notification obligations to support the new reassessment framework. Proposed new section 84K outlines lodgement requirements as follows:

> **84K Lodgement requirement on expenditure of exploration amount**
>
> The farmee under an upfront farm-in agreement must, within 14 days after spending the exploration amount for each interest in the exploration authority, lodge -
>
> (a) information, in the approved form, about the expenditure of the exploration amount; and
>
> (b) the upfront farm-in agreement or a transfer duty statement for the agreement.
>
> *Note* –
>
> Under the Administration Act, the requirement under this section is a lodgement requirement for which a failure to comply is an offence under section 121 of that Act.

Proposed new section 84K states that the farmee under an upfront farm-in agreement will be required to lodge specified documents for reassessment of the farm-in agreement within 14 days of when an expenditure amount for an exploration authority interest is spent under the agreement.[198]

The QRC believes that the lodgement and assessment obligation are more onerous for up-front agreements than deferred agreements where for the lodgement of a notice is required within 14 days instead of the usual 30 days for up-front agreements. The QRC suggests that for consistency with the rest of the Bill, the time period for lodgement under proposed new section 84K be extended from 14 days to 30 days.[199] They stated that although the 14 days is consistent with the Ruling, it is not in line with the rest of the Duties Act.[200]

QRC explained that the current small companies, which are often in remote areas, may find that they have difficulties in complying with the 14 day requirement.[201]

QLS concurred with the suggestion that the time limit in proposed new section 84K should be made consistent with all other time limits to reduce possible inadvertent non-compliance.[202] QLS explained that the 14-day period could lead to inadvertent non-compliance and possible penalties for the parties.[203]

Queensland Treasury explained that proposed new section 84K addressed upfront farm-in agreements where, after the transfer, the farmee completes the conditions and retains the transfer. The department stated in these cases, the farmee knows whether or not those conditions are met as the transfer has already occurred. The department explained that as the farmee has already taken the benefit of a delay in their liability through the operation of the farm-in concession, a shorter 14 day lodgement is appropriate.[204, 205]

QLS queried to what extent whether provisions in proposed new section 84K might interact and possibly conflict with the conditions of a tenement held under the *Mineral Resources Act 1989* or the *Petroleum and Gas (Production and Safety) Act 2004*.[206]

198 Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 13
199 Queensland Resources Council, Submission 14: 2
200 Mr Barger, Transcript 6 May 2015 (1): 11
201 Mr Barger, Transcript 6 May 2015 (1): 11
202 Queensland Law Society, Submission 17: 7
203 Mr Fitzgerald, Transcript 6 May 2015 (1): 11
204 Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 11
205 Correspondence to FAC from Queensland Treasury, dated 15 May 2015 (attachment 2): 2
206 Queensland Law Society, Submission 17: 5

Queensland Treasury explained that farm-in agreements are only a percentage of the tenements covered under the legislation which grants and manages a broad range of resource tenements in Queensland. The department emphasised that:

> *…the DNRM legislation and requirements are concerned with suitability of applicants to hold and develop tenures in accordance with the State's objectives for resource management.*[207]

The department stated that the proposed legislation does not require the recording of farm-in agreements and instead places the obligation on the tenement holder irrespective of the commercial arrangements the tenement holder has entered into. Queensland Treasury added that farm-in duty concessions are designed to ensure appropriately targeted tax relief for the transaction between the holder of a tenure and a person seeking to farm-in to a portion of that tenure, while minimising risk to State revenue.[208]

5.14 Committee comments

The Committee noted that the 14 day notification arrangements have been in place since the Ruling was issued in June 2013 and the Committee did not receive any evidence that this time frame has not been complied with.

The Committee considers that the time frame to be appropriate, given that requirement will only be triggered when other actions are undertaken to facilitate the transfer and the farmee has already had the benefit of a delay due to the deferred nature of the concession.

5.15 Division 4 Lodgement and notice requirements for upfront farm-in agreements – proposed new section 84L

Proposed new section 84L(2) outlines that the farmee has 30 days after the expenditure completion date, regardless of whether or not the farmee subsequently spends the exploration, to give notice to the Commissioner of State Revenue in the approved form.[209]

The explanatory notes stipulate that the farmee will be required to notify the Commissioner and lodge specified material, if they fail to expend an exploration amount for a particular exploration authority interest by the relevant expenditure completion date for that interest.[210] Proposed new section 84L outlines:

84L Notice requirement for farmee in particular circumstances

(1) This section applies if -

(a) an interest in an exploration authority is transferred to the farmee under an upfront farm-in agreement; and

(b) the farmee fails, under the agreement, to spend all or part of the exploration amount for the interest on or before the expenditure completion date for the amount.

(2) The farmee must, within 30 days after the expenditure completion date -

(a) give notice to the commissioner, in the approved form, of the matter mentioned in subsection (1)(b); and

(b) lodge the farm-in agreement or a transfer duty statement for the agreement.

Note -

Failure to give the notice mentioned in paragraph (a) is an offence under the Administration Act, section 120. Also, the requirement under paragraph (b) is a lodgement requirement under the Administration Act for which a failure to comply is an offence under section 121 of that Act.

[207] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 30-31
[208] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 30-31
[209] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 33
[210] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 13

(3) If the original expenditure completion date is varied under the farm-in agreement, the farmee must comply with subsection (2) in relation to a failure to spend an exploration amount on or before each of the following -

(a) the original expenditure completion date for the amount;

(b) the original expenditure completion date, as varied under the agreement;

(c) each variation to the date mentioned in paragraph (b) made under the agreement.

(4) In this section -

original expenditure completion date, for an exploration amount for an interest in an exploration authority under an upfront farm-in agreement, means the day stated in the agreement on or before which the exploration amount must be spent.

AMEC advised that the 30-day period would be impossible to meet in practice as there are often disputes between the parties as to eligible spend. They recommended that it be changed to 30 days after the farmee and farmor have agreed that expenditure is not met.[211]

Queensland Treasury stated that the obligation under section 84L(2) is not too onerous because the 30 days allowed could be complied with even if any dispute or variation negotiations were not completed. The department also advised that the 30 days allows for any negotiations or variation to occur and reflects commercial realities. The department noted:

> *The 30 day period is considered a reasonable time for a liable party to lodge following the occurrence of a transaction (eg a transfer), which may until that point have been subject to conditions outside the control of the taxpayer, and therefore somewhat uncertain until the transaction actually occurs.*[212]

The department also explained that for deferred farm-in agreements, the transfer does not occur until the relevant conditions to be met by the farmee have been met.[213] The department emphasised that the 30 days is consistent with similar obligations in the Duties Act.[214]

AMEC stated that practically, some of the issues could take years to be settled in a legal context. They advised that:

> *…there is no incentive for a company to announce a farm-in agreement that might be detrimental to their stock price and companies would rather negotiate an outcome that report to the Commissioner within 30 days and de-value their stock.*[215]

Queensland Treasury explained:

> *All that is required is notice in an approved form (which is currently in development, but is not expected to be complex), that the farmee has failed, under the agreement, to spend all or part of the exploration amount within the time required under the agreement, and lodgement of a copy of the farm-in agreement. Advice that the position is still under dispute or negotiation can also be provided at that time.*[216]

[211] Association of Mining and Exploration Companies, Submission 11: 3
[212] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 10
[213] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 32
[214] Correspondence to FAC from Queensland Treasury, dated 15 May 2015 (attachment 2): 2
[215] Correspondence to FAC from Association of Mining and Exploration Companies, dated 13 May 2015: 2
[216] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 11 & 20

5.16 Committee comments

The Committee is not convinced that all aspects of this issue have been resolved, particularly in the way disputes are resolved. Whilst Queensland Treasury has assured the Committee that this is not an onerous requirement, and that the notice provisions could be complied with even if dispute or variation negotiations were not completed, this issue remains of concern to stakeholders. It is the Committee's view that the department needs to further consider this issue in light of the concerns highlighted by stakeholders. It may be that these concerns can be addressed by further education and discussions with stakeholders or it may warrant further amendment of the provisions.

The Committee recommends that the department further consider this issue.

Recommendation 4

The Committee recommends that the Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships consider the concerns raised by stakeholders that the 30 day notice provisions do not contemplate when disputes arise and give consideration to what actions are necessary to address these concerns.

5.17 Division 5 Reassessments – Proposed new sections 84M and 84N

The explanatory notes outlined that proposed new section 84M sets out circumstances, described as reassessment events, the occurrence of which requires the Commissioner of State Revenue to reassess transfer duty on a farm-in agreement. The explanatory notes provide that new subsection (1) identifies these reassessment events as follows:

> *For an upfront farm-in agreement, they are that the farmee has an obligation to lodge under section 84K, or to give notice and lodge under section 84L(2). For a deferred farm-in agreement, there is a reassessment event if, under the farm-in agreement, an interest in an exploration authority is transferred by the farmor to the farmee.*[217]

The explanatory notes also state:

> *Subsection (2) specifies particular circumstances where subsection (1) does not apply, such that the Commissioner is not required to reassess the agreement. These relate to whether the interest in the exploration authority has been transferred back to the farmor under an upfront farm-in agreement or where an ECD variation has been made for the expenditure of the exploration amount and the Commissioner is satisfied the ECD variation is not part of an arrangement to avoid the imposition of transfer duty.*
>
> *Subsection (3) specifies further circumstances where subsection (1) does not apply with the result that the Commissioner is not required to reassess the agreement. These relate to transfers under a 100% farm-in agreement where the transfer results in the farmee holding 100% of the interest in the exploration authority. In these cases, the transfers are liable to duty without the benefit of the concession.*

[217] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 34

Subsection (4) clarifies that the obligation to reassess under subsection (1) applies despite the limitation period under the Taxation Administration Act 2001.[218]

84M When commissioner must reassess transfer duty

(1) The commissioner must make a reassessment of transfer duty for a farm-in agreement if, under the agreement, either of the following events happen (each a ***reassessment event***) -

(a) for an upfront farm-in agreement, the farmee is required to -

(i) lodge the information and farm-in agreement or a transfer duty statement for the agreement under section 84K; or

(ii) give notice and lodge the farm-in agreement or a transfer duty statement for the agreement under section 84L(2);

(b) for a deferred farm-in agreement – an interest in an exploration authority is transferred by the farmor to the farmee.

See also section 84P for when the commissioner must make a reassessment.

(2) However, subsection (1)(a)(ii) does not apply if -

(a) the farmee transfers the interest back to the farmor under the agreement before the expiry of -

(i) the period for complying with section 84L(2); or

(ii) if the commissioner considers a longer period is appropriate - the longer period; or

(b) both of the following apply -

(i) an ECD variation has been made for the expenditure of the exploration amount;

(ii) the commissioner is satisfied the ECD variation is not part of an arrangement to avoid the imposition of transfer duty.

(3) Also, subsection (1) does not apply if -

(a) the requirement mentioned in subsection (1)(a) relates to the transfer of an interest in an exploration authority under an upfront farm-in agreement that is a 100% farm-in agreement and, on the completion of the transfer, 100% of the interest in the authority will be held by the farmee; or

(b) the transfer of an interest in an exploration authority mentioned in subsection (1)(b) is made under a deferred farm-in agreement that is a 100% farm-in agreement and, on the completion of the transfer, 100% of the interest in the authority will be held by the farmee.

(4) Subsection (1) applies despite the limitation period under the Administration Act for reassessments.

Note -

See the Administration Act, part 3 (Assessments of tax), division 3 (Reassessments).

[218] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 34

The explanatory notes state that proposed new section 84N outlines how transfer duty is reassessed on a farm-in agreement for a reassessment under proposed new section 84M.

> **84N How transfer duty is reassessed on farm-in agreements**
>
> (1) Subject to subsections (3) and (4), for a reassessment under section 84M the dutiable value of the farm-in agreement includes each of the following, other than an exploration amount -
>
> (a) the consideration paid or payable to the farmor, or a related person of the farmor, for the farmor entering into the agreement;
>
> (b) an amount relating to the transfer of an interest in the exploration authority the subject of a reassessment event, paid or payable on or before the day the latest reassessment event happens;
>
> (c) any other consideration under the agreement paid or payable to the farmor, or a related person of the farmor, on or before the day the latest reassessment event happens.
>
> (2) If subsection (1) applies for a reassessment, section 502(1)(a) and (b) and (2)(a) -
>
> (a) applies in relation to the consideration mentioned in subsection (1); and
>
> (b) does not apply in relation to any other consideration payable under the agreement.
>
> (3) Subsection (4) applies to a reassessment for a reassessment event mentioned in section 84M(1)(a)(ii) in relation to an interest if the farmee has failed to transfer the interest back to the farmor under the agreement within the time mentioned in section 84M(2)(a) and -
>
> (a) an ECD variation has not been made for the expenditure of the exploration amount; or
>
> (b) both of the following apply -
>
> (i) an ECD variation has been made for the expenditure of the exploration amount;
>
> (ii) the commissioner is satisfied the variation is part of an arrangement to avoid the imposition of transfer duty.
>
> (4) The commissioner must make the reassessment to impose transfer duty on the transaction that is the agreement mentioned in section 84M(1) as if the transaction were not a farm-in agreement under this part.
>
> (5) This section applies despite section 84J.

QLS submitted that the wording in proposed new section 84N(1)(c) of '*any other consideration under the agreement paid or payable to the farmor, or a related person of the farmor, on or before the day the latest reassessment event happens*' is not particularly helpful. QLS advised that the wording:

> *…does not clarify who, or on whose behalf, the consideration is to be paid and does not connect the consideration to any corresponding obligation.*[219]

QLS explained that it assumes that it is intended to capture payments for mining information and the reimbursement for exploration previously expended by the farmor but queries whether fees paid for services provided by the farmor (which is not covered by the term 'exploration amount') is also included. QLS recommends proposed new section 84N(1)(c) should be deleted or amended to provide greater clarity.[220]

Queensland Treasury advised that proposed new section 84N(1)(c) has broad operation and is intended to cover a range of payments not normally included as part of duty.[221] The department stated the:

> *…concession is based on duty applying to consideration only (not value) therefore all consideration other than exploration amounts paid to farmor is dutiable.*[222]

[219] Queensland Law Society, Submission 17: 8
[220] Queensland Law Society, Submission 17: 8
[221] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 34
[222] Correspondence to FAC from Queensland Treasury, dated 15 May 2015 (attachment 2): 2

5.18 Committee comments

The Committee understands that in considering the levying of duty, Queensland Treasury would normally include either consideration or value as the dutiable amount in order to prevent avoidance of duty. In putting in place the concession arrangements for farm-in agreements, the alternative of value has been omitted.

The Committee also understands that the clause has been deliberately drafted broadly to ensure that duty is not avoided through the omission of this alternative limb.

5.19 Division 6 Miscellaneous – Proposed new section 84O

The explanatory notes state that proposed new section 84O provides that section 58(1)(c) of the *Taxation Administration Act 2001* does not apply in relation to a reassessment made by the Commissioner of State Revenue under section 84M, unless:

- section 84N(4) applies for the reassessment; or
- the farmee has failed to comply with a lodgement requirement for the reassessment event to which the reassessment relates, or a requirement to give the commissioner notice under section 84L(2) for the reassessment event to which the reassessment relates'.[223]

Section 58(1)(c) of the *Taxation Administration Act 2001* would otherwise make a taxpayer liable to penalty tax where primary tax assessed on the reassessment is more than that assessed on the original assessment or an earlier reassessment. Section 58(1)(c) continues to apply if the reassessment is one to which section 84N(4) or section 84P applies, or where the farmee has failed to comply with a lodgement or notice requirement for the reassessment event.[224]

Proposed section 84O states:

> **84O Application of penalty tax under Administration Act**
>
> The Administration Act, section 58(1)(c) does not apply in relation to a reassessment made by the commissioner under section 84M, unless -
>
> (a) section 84N(4) applies for the reassessment; or
>
> (b) the farmee has failed to comply with -
>
> (i) a lodgement requirement for the reassessment event to which the reassessment relates; or
>
> (ii) a requirement to give the commissioner notice under section 84L(2) for the reassessment event to which the reassessment relates.

5.20 Division 6 Miscellaneous – Proposed new section 84P

Section 84P outlines the exclusion of arrangements to avoid the imposition of transfer duty from the application of the farm-in concession provisions as follows:

> **84P Exclusion of arrangements to avoid the imposition of transfer duty**
>
> (1) This section applies to a dutiable transaction that is a farm-in agreement if the transaction is part of an arrangement to avoid the imposition of transfer duty.
>
> (2) The commissioner must make an assessment to impose transfer duty on the transaction as if the transaction were not a farm-in agreement under this part.
>
> (3) Subsection (2) applies despite the limitation period under the Administration Act for reassessments.
>
> *Note* -
>
> See the Administration Act, part 3, division 3.

[223] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 35

[224] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 35

The explanatory notes state:

> *Subsection (1) identifies the section as applying to a dutiable transaction that is a farm-in agreement if the transaction is part of an arrangement to avoid the imposition of transfer duty. In those circumstances, subsection (2) requires the Commissioner of State Revenue to make an assessment to impose transfer duty on the agreement as if it were not a farm-in agreement under part 8A. Subsection (3) clarifies that the obligation to reassess under subsection (2) applies despite the limitation period under the Taxation Administration Act 2001.*[225]

The QRC considers the wording in proposed new section 84P(1) to be clumsy and could result in companies breaching that section each time they seek to have the concession applied to their farm-in agreements. They stated:

> *This is because a taxpayer would enter into a complying farm-in agreement to access the concession, which has the effect of avoiding the imposition transfer duty.*[226]

The QRC recommends that proposed new section 84P(1) should be deleted and the Commissioner could adhere to the general anti-avoidance provisions within the Duties Act.[227] QLS agrees that this section should be deleted.[228]

Queensland Treasury explained that currently:

> *…general anti-avoidance provisions require the Commissioner to hypothesise upon what the transaction would have looked like but for the avoidance scheme (the "counter-factual scenario") and assess duty on that basis.*[229]

The department outlined that general anti-avoidance mechanisms can be complex and open to dispute.[230] The department considered specific provision provides greater certainty and is more appropriate.[231]

5.21 Committee comments

The Committee agrees that specific provisions where those who are prosecuted under the provisions know the penalty for non-compliance, is better than general anti-avoidance mechanisms, where decisions on penalties are left to the discretion of the Commissioner.

6 Examination of the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015* – Amendment of *Environmental Protection Act 1994 – clauses 47 to 51*

6.1 Background

The explanatory notes outline the amendments to the *Environmental Protection Act 1994* (EP Act) allow for the cancellation of Transitional Environmental Programs (TEPs) or a Temporary Emissions Licences (TELs).[232]

[225] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 13
[226] Queensland Resources Council, Submission 14: 3
[227] Queensland Resources Council, Submission 14: 3
[228] Queensland Law Society, Submission 17: 9
[229] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 34
[230] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 34
[231] Correspondence to FAC from Queensland Treasury, dated 15 May 2015 (attachment 2): 2
[232] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 3

The explanatory notes provide the definition of TEPs and TELs as follows:

> *TEPs are a tool available under the Environmental Protection Act 1994 which allow, for example, a transitionary period for environmental authority holders not operating in accordance with their licence to reach or return to compliance with their approval.*
>
> *TELs are a tool available for authorising in emergency situations what would otherwise be unlawful activities, such as urgent release of water from tailings dams during flood events.*[233]

The explanatory notes also state that a TEPs is a:

> *…tool available under the Environmental Protection Act 1994 which allow a transitionary period for operators not meeting the standards set under the Environmental Protection Act 1994 to reach or return to compliance with the standard.*[234]

6.2 Clause 47 – Insertion of new ch 7, pt 3, div 3B

The explanatory notes outlined that clause 47 inserts a new division 3B into the EP Act which contains the provisions for the cancellation of the approval of a transitional environmental program (TEP).[235]

Clause 47 inserts a new division 3B into the EP Act as follows:

Clause 47 – Insertion of new ch 7, pt 3, div 3B

Chapter 7, part 3 -

Insert -

Division 3B Cancellation of approval for transitional environmental programs

344E Cancelling approval

(1) The administering authority may cancel the approval for a transitional environmental program for any of the following reasons -

- (a) the approval holder -
  - (i) agrees in writing to the cancellation; or
  - (ii) gives the administering authority a notice under section 347(6) of the disposal of the place or business to which the program relates; or
  - (iii) gives the administering authority a notice under section 348 of ceasing the activity to which the program relates;
- (b) the administering authority is otherwise satisfied the approval holder has -
  - (i) disposed of the place or business to which the program relates; or
  - (ii) ceased the activity to which the program relates.

(2) If the administering authority decides to cancel an approval, the administering authority must -

- (a) give a notice that states the details of the cancellation to the approval holder; or
- (b) if after making reasonable enquiries the administering authority can not locate the approval holder -record details of the cancellation in the register of transitional environmental programs.

(3) The cancellation takes effect on the date stated in the notice or record.

(4) The administering authority must ensure the date stated for cancellation is -

- (a) at least 20 business days after the administering authority gives the notice or makes the record; and
- (b) if the approval is being cancelled under subsection (1)(a)(ii) - not before the day when the place or business is disposed of.

[233] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 3
[234] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 45
[235] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 45

(5) In this section -

details of the cancellation means –

(a) that the approval is cancelled; and

(b) the reason for the cancellation; and

(c) the date on which the cancellation takes effect.

344F Cancelling without approval holder's agreement

(1) This section applies if the administering authority gives a notice or makes a record about the cancellation, under section 344E(1)(b), of the approval for a transitional environmental program.

(2) If the administering authority stops being satisfied of a matter in section 344E(1)(b) before the cancellation takes effect, the authority must immediately -

(a) withdraw the notice by another written notice; or

(b) remove the record.

(3) If the notice is withdrawn or the record is removed, the proposed cancellation has no effect.

344G Cancelled approval noted under s 343A

(1) This section applies if -

(a) the approval for a transitional environmental program is cancelled; and

(b) a note about the program was included in an environmental authority under section 343A; and

(c) the environmental authority is still in force.

(2) The administering authority must give the holder of the environmental authority a copy of the authority that does not include the note.

When introducing the Bill, the Treasurer explained that the amendments to the EP Act allows the cancellation of a TEP or a TEL where the operator and the administering authority have agreed on other measures to achieve compliance with the EP Act or the program or licence is no longer required.[236]

The explanatory notes provide the example of an environmental authority holder who requires time to reach or return to compliance with the conditions of their environmental authority. At present the EP Act contains provisions that allow for a TEP to be amended, and provides for what happens when it ends on its terms. The explanatory notes stipulate that there are currently no provisions to cancel an approval for a TEP when it is no longer required or the holder of the approval for the program has decided on other measures to achieve compliance with the EP Act.[237]

The Department of Environment and Heritage Protection (DEHP) advised that the failure to cancel approvals that are no longer required could potentially lead to uncertainty in the relationship between the conditions of the environmental authority and the conditions of the approval.[238]

DEHP explained that the amendments do not provide any disadvantage to an operator by the way they are constructed and there is no loss of rights or obligations for an operator. They stated:

> *At the same time if a transitional environmental program, for example, was to be cancelled, the operator is still required to comply with the requirements under their environmental authority and therefore the environment is also protected. So we have an administrative amendment with no adverse impact on the operators and no adverse impact on the environment.*[239]

[236] Queensland Legislative Assembly, Hon CW Pitt MP, Treasurer, Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill Introduction, *Parliamentary Debates (Hansard)*, 27 March 2015: 236

[237] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 45

[238] Mr Wade, Department of Environment and Heritage Protection, Public Briefing Transcript 10 April 2015: 3

[239] Mr Wade, Department of Environment and Heritage Protection, Public Briefing Transcript 10 April 2015: 4

Mount Isa Mines Limited (MIM) supported the proposed amendments, in particular the inclusion of section 344E in the *Environmental Protection Act 1994*. MIM advised that they currently hold two approved TEPs (air and water) for its operation at Mount Isa. They also explained that the TEP for air currently states that the Copper Smelter in Mount Isa will close at the end of 2016. MIM stated that they are currently exploring options to extend the metallurgical assets in both Mount Isa and Townsville, including the Copper Smelter.[240] They advised:

> *This proposed amendment will allow MIM to have certainty in relation to the regulatory path available to it for any potential extension to its metallurgical assets in Mount Isa and Townsville.*[241]

Incitec Pivot Limited's submission also supported the amendments to the EP Act.[242]

The QRC advised that it has no concerns with the wording of the amendments in their current form.[243]

The Committee asked the QRC whether they have received feedback from any of their other members. They advised that they have had feedback and that the amendments were seen to be beneficial.[244]

QLS submitted that there are inconsistencies in the administering authority's power and discretion to amend, suspend or cancel TEPs and TELs. QLS notes that clause 47 (insertion of new sections 344E to 344G) allows for the cancellation of a TEP, with the approval holder's consent or where the relevant activity has ceased. QLS considers that the circumstances for cancellation are too limited and should reflect the circumstances for cancellation under other sections (e.g. sections 211-215, 257, 344 and 357J) of the EP Act.[245]

The Committee asked QLS to clarify how further flexibility in the circumstances in which TEPs or TELS can be cancelled could be beneficial. QLS stated that the amendments made by the Bill do not provide a process for TEPs or TELs to be brought to an end. They explained that for Environmental Authorities (EAs), there is a process for voluntary surrender, which is a thorough process of vetting the activities (for example whether remediation has been completed) or the administering authority has the power to step in to end the activity. QLS stated:

> *The core of our submission is that there is good reason to align the processes and the criteria with those that apply to environmental authorities. It is not helpful from the perspective of lawyers who work with clients, mining companies, petroleum companies, landowners, environmental groups and councils to be dealing with a different process and different criteria in circumstances that, but for the form of the authority held, are essentially similar.*[246]

Queensland Treasury advised that TEPs are different to EAs in that TEPS are issued for a fixed period of time to address specific matters. The department explained that as EAs are intended to continue for the life of an operation, a number of grounds for their amendment (as in section 215) are required. The department stated that limitations are applied to TEPs because the environmental protection policies that may occur during the life of an EA is less likely to be an issue for TEPs given its fixed period of approval.[247]

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240 Mount Isa Mines, Submission 6: 1
241 Mount Isa Mines, Submission 6: 1
242 Incitec Pivot Limited, Submission 16: 1
243 Queensland Resources Council, Submission 4: 1
244 Mr Barger, Transcript 6 May 2015 (2): 5
245 Queensland Law Society, Submission 17: 10-11
246 Mr Klapper, Transcript 6 May 2015 (2): 7
247 Correspondence to FAC from Queensland Treasury, dated 1 May 2015: 6

QLS reiterated that the introduction of the end point is a useful process but they are concerned about the possibility of ending up with 'three kinds of environmental permits that are all brought to an end in different ways and on different criteria'.[248]

6.3 Clauses 48 – Amendment of section 348 (Notice of ceasing activity by holder of program approval)

The explanatory notes state that clause 48 is to correct a drafting error by removing the word "the" as follows:

348 Notice of ceasing activity by holder of program approval

Within 10 business days after ceasing to carry out the activity to which a transitional environmental program relates, the holder of the approval for the program must give written notice of ~~the~~ ceasing the activity to the administering authority.

6.4 Clauses – 49 Replacement of section 357H (Licence can not be surrendered or transferred)

Clause 49 replaces section 357H to remove references to surrendering TELs. The explanatory notes outline that these amendments are sequential to that of section 357J.

The explanatory notes state:

> *Although the holder still has no ability to apply for a surrender, the amendments to section 357J insert a process for cancellation of the TEL with the agreement of the holder. In some ways, this process is akin to a surrender process by agreement, so maintaining the prohibition of a surrender in this section would lead to internal inconsistencies in the Act. However, it should be noted that the holder is still unable to request a surrender of the TEL as this would be inconsistent with the intent of the TEL to be a temporary relaxation of approval conditions. If the TEL is no longer required, the appropriate mechanism would be to use the power to cancel the TEL by agreement.*[249]

6.5 Clause 50 – Amendment of section 357J (Amendment, cancellation or suspension of temporary emissions licence)

The explanatory notes also outline that clause 50 amends section 357J to provide for the cancellation of TELs in certain circumstances. The explanatory notes consider TELs to be an emergency response tool which permit the temporary relaxation or modification of conditions or requirements that relate to the release of a contaminant into the environment. The explanatory notes provide the following example:

> *The TEL may authorise the urgent release of water from tailings dams during flood events, or the temporary relocation of a monitoring point which is inaccessible in the immediate aftermath of a flood event.*[250]

The explanatory notes consider that TELs can be cancelled by the administering authority if the effects of the release are greater than envisaged because of their temporary nature and need for an urgent response. However, at present there is no provision to cancel a TEL when it is no longer required or the department and TEL holder have agreed on other measures to achieve compliance with the EP Act.[251]

[248] Mr Klapper, Transcript 6 May 2015 (2): 7
[249] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 48
[250] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 49
[251] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 48

QLS submitted that TELs should be able to be cancelled without the approval holder's consent, not just in circumstances set out under amendments proposed in section 357J. QLS suggests that TELs should be able to be cancelled in similar circumstances to that considered for EAs.[252]

Queensland Treasury explained that TELs are different to EAs because they are intended to be for a short period and for a specific purpose and the circumstances where a TEL may need to be amended are far more restrictive. The department considered that:

> *…widening the power to cancel or amend a TEL has the potential to adversely affect the rights and obligations of individuals.*[253]

6.6 Committee comments

The Committee notes that, overall, industry has no issues with these amendments. The Committee also considers that these amendments would provide greater clarity for some stakeholders.

7 Examination of the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015* – Amendment of *Financial Accountability Act 2009* – clauses 52 to 58

The Treasurer outlined, when introducing the Bill, that the amendments to the *Financial Accountability Act 2009* (FA Act) will reflect modern auditing and financial management practices and streamline procedural matters such as increasing the powers delegated by the Treasurer to appropriate officers in Queensland Treasury and Queensland Treasury Corporation (QTC) and addressing issues relating to machinery-of-government changes. He emphasised that appropriate controls and governance arrangements will continue to exist with the proposed changes.[254]

7.1 Clause 53 – Amendment of section 48 (Delegation by Treasurer of particular powers)

The explanatory notes outline that clause 53 amends section 48 to add powers that the Treasurer is able to delegate.[255]

[252] Queensland Law Society, Submission 17: 11

[253] Correspondence to FAC from Queensland Treasury, dated 1 May 2015: 7

[254] Queensland Legislative Assembly, Hon CW Pitt MP, Treasurer, Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill Introduction, *Parliamentary Debates (Hansard)*, 27 March 2015: 236

[255] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 50

At present, section 48 outlines[256]:

48 Delegation by Treasurer of particular powers

(1) The Treasurer may delegate the Treasurer's powers mentioned in subsection (2) to an officer or employee of the treasury department who has the qualifications, experience or standing appropriate to exercise the power.

Example of standing—

an officer's classification level in the public service

(2) Subsection (1) applies to the powers of the Treasurer under sections 18(4), 21, 23, 24, 26, 50, 51, 55, 59, 71, 77, 78, 81, 83, 84, 85, 87 and 97 to the extent it continues the application of section 46(4) of the repealed Act.

(3) Also, the Treasurer may delegate the Treasurer's powers under—

(a) section 21 to an accountable officer to the extent the losses relate to administered receipts of the accountable officer's department; and

(b) section 50 to either of the following who has the qualifications, experience or standing appropriate to exercise the power—

(i) the chief executive officer or another officer or employee of the Queensland Investment Corporation;

(ii) an officer or employee of the Queensland Treasury Corporation.

(4) In this section—

repealed Act means the *Financial Administration and Audit Act 1977*.

The proposed amendments replace section 18(4) in section 48(2) with sections 17 and 18 and replace section 50 in section 48(3)(b) with section 50 or 53(5).

Section 17 of the Act covers the accounts for the consolidated fund. The inclusion of section 17 in section 48 ensures that the Treasurer is able to delegate powers in relation to the consolidated fund. Section 53(5) allows that the Treasurer has all the powers of an individual and may, for example—

(a) enter into contracts; and

(b) acquire, hold, dispose of, and deal with, property; and

(c) appoint agents and attorneys; and

(d) engage consultants; and

(e) fix charges, and other terms, for services the Treasurer supplies; and

(f) do anything necessary or convenient to be done in the performance of the Treasurer's functions under this or another Act.[257]

The inclusion of section 53(5) in section 48(3)(b) allows the Treasurer to delegate his powers to the chief executive officer or officials within the Queensland Investment Corporation (QIC) or the Queensland Treasury Corporation (QTC).

The Committee asked Queensland Treasury why it was considered necessary to expand the power that the Treasurer is able to delegate. The department explained that the amendment is largely to clarify the existing provisions in the legislation. They stated that the Treasurer operates the consolidated fund bank account under legislation and that the department makes transactions on the behalf of the Treasurer. Queensland Treasury added that there was not a specific delegation of some of these powers in terms of operating those bank accounts and receiving transactions and making payments. The department stated that the amendment confirms that power can be delegated to officials.[258]

[256] *Financial Accountability Act 2009*: 33
[257] *Financial Accountability Act 2009*, section 53(5)
[258] Mr Miller, Queensland Treasury, Public Briefing Transcript 10 April 2015: 8-9

7.2 Clause 54 – Amendment of section 53 (Corporation sole of The Treasurer of Queensland)

The explanatory notes outline that clause 54 amends section 53(5) to ensure that the Treasurer's powers in regards to derivative transactions are clearer and to provide appropriate safeguards.[259] The amendment will add a further item to the list of examples that the Treasurer may undertake. However, it also inserts a clause to restrict the power to enter into derivative transactions only to hedge against a risk to which the State is or will be exposed.

Subsequent to the aments included in clauses 53 and 54, section 53 will be as follows:

53 Corporation sole of The Treasurer of Queensland

(1) The corporation sole constituted by the Treasurer under the *Financial Administration and Audit Act 1977*, section 43 is continued in existence under the name The Treasurer of Queensland (the ***Treasurer***).

(2) The Treasurer —

(a) is a body corporate with perpetual succession; and

(b) has a seal; and

(c) may sue and be sued in the Treasurer's corporate name.

(3) The Treasurer represents the State.

(4) Without limiting subsection (3), the Treasurer has all the State's privileges and immunities.

(5) The Treasurer has all the powers of an individual and may, for example—

(a) enter into contracts; and

(b) acquire, hold, dispose of, and deal with, property; and

(c) appoint agents and attorneys; and

(d) engage consultants; and

(e) fix charges, and other terms, for services the Treasurer supplies; and

(f) enter into derivative transactions; and

(g) do anything necessary or convenient to be done in the performance of the Treasurer's functions under this or another Act.

(6) However, the Treasurer may enter into a derivative transaction only to hedge against a risk to which the State is or will be exposed.

(7) The Treasurer also has the powers conferred on the Treasurer by this or another Act.

(8) The Treasurer may exercise the Treasurer's powers inside and outside Queensland.

(9) Without limiting subsection (8), the Treasurer may exercise the Treasurer's powers outside Australia.

The explanatory notes also state that these amendments will clarify that the Treasurer has the ability to enter into derivative transactions, but only to hedge against a risk to which the State is or will be exposed.[260]

The Committee queried why the amendments were necessary and whether they would have any impacts on existing derivative transactions. Queensland Treasury explained that the legislation currently only provides for departments or accountable officers to enter into derivative transactions to hedge against a risk. They stated that there is currently no provision for the Treasurer to enter into a transaction on behalf of the state as a whole.[261]

Queensland Treasury explained that in the early planning stages of some large infrastructure projects, it is unclear which department will undertake the financial risk. In these cases, the department considered that it would be a more sensible approach for the Treasurer to enter into that derivative transaction on behalf of the state and managed as a whole of government exposure.[262]

[259] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 19
[260] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 50
[261] Mr Miller, Queensland Treasury, Public Briefing Transcript 10 April 2015: 9
[262] Mr Miller, Queensland Treasury, Public Briefing Transcript 10 April 2015: 9

7.3 Clause 55 – Amendment of section 78 (Head of internal audit)

The explanatory notes outline that clause 55 amends section 78 to allow an accountable officer in a department to nominate a non-public service employee to the role of Head of Internal Audit (HIA). The minimum responsibilities contained in section 78 and the minimum qualifications as contained in the *Financial Accountability Regulation 2009* will be applicable to the non-public service employee.[263]

The Committee noted that section 48 was previously amended in the *Treasury and Trade and Other Legislation Amendment Bill 2013* to allow for public service employees from outside the departmental to be appointed to the role of HIA, with the approval of the Treasurer. The amendments in that Bill also allowed the Treasurer to delegate this responsibility to an officer within Queensland Treasury under section 48. The reason cited for this amendment at the time was that following the machinery of government changes in 2012, a number of departments entered into bureau type arrangements, resulting in many requests to the Treasurer for external HIAs to be nominated.[264]

The Committee queried whether the 2013 amendments did not meet the government's requirements. Queensland Treasury explained that the previous amendments met the government's requirements at the time that they were introduced. However, they stated that since then a number of departments have taken on some alternative arrangements in relation to their internal audit practice and that private sector providers in internal audits are being used more. The department advised:

> *As part of that, there are a number of cases where departments think it would be more appropriate for the people conducting that internal audit process, being private sector providers, to be nominated as the head of internal audit, so that is what is being sought under this amendment.*[265]

The Committee also heard that Queensland Treasury has not received any request to put in place a non-public service employee as HIA because the current legislation does not allow for it. The department explained that there is a need to expand the provisions to enable non-public service employees as non-public service employees were undertaking internal audit roles within departments. They noted that in these cases, it may be more appropriate to nominate one of those as HIA if they are in the best position within the organisation to undertake that role.[266]

The Committee asked if there are risks or benefits to departments in retaining an internal versus external HIA. Queensland Treasury considered that the benefits of external providers are that the person who knows the roles best would be undertaking the role. The department noted that some of the risks include whether the person has a clear understanding of the operations of the department. They stated:

> *…certainly we are intending to issue guidance in our supporting guidance material around the relationship between the head of internal audit in those situations and the accountable officer, so making sure that there is clear reporting and discussion between the head of internal audit and the accountable officer of the department, which is consistent with the Auditor-General's response and consultation on this amendment.*[267]

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[263] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 50

[264] Finance and Administration Committee (54th Parliament), Report No 31, *Treasury and Trade and Other Legislation Amendment Bill 2013*, August 2013: 6

[265] Mr Miller, Queensland Treasury, Public Briefing Transcript 10 April 2015: 9

[266] Mr Miller, Queensland Treasury, Public Briefing Transcript 10 April 2015: 9

[267] Mr Miller, Queensland Treasury, Public Briefing Transcript 10 April 2015: 10

7.4 Clauses 56 to 58 – Amendment of section 85 (when departments may enter into derivative transactions); Amendment of section 86 (Requirement to report to appropriate Minister about derivative transactions) and insertion of new section 88A

The explanatory notes outline:

> *Clause 56 amends section 85 to remove any doubt that a department does not enter into a derivative transaction if it merely takes over the administration of a derivative transaction entered into by another department.*[268]

Clause 57 amends section 86 to provide that a department must give reports to its Minister about derivative transactions administered by the department and the Minister must monitor these transactions. In addition, the amendment allow a copy of the report to be given to the Treasurer or an appropriately qualified employee of Treasury department, and also clarifies that a department administers a derivative transaction if it enters into the derivative transaction or the department takes over the administration of the derivative transaction from another department.[269]

The explanatory notes outline that the amendments to existing section 86 acknowledge that responsibility for derivative transactions may change over time and can move between departments. This can occur where there has been a change in the administrative arrangements and require the appropriate minister to be given a report on, and to monitor, derivative transactions administered by the department.[270]

The department explained that during machinery of government change or related change in responsibilities, where a department has entered into a derivative transaction and the reporting arrangements have been set up through the minister but responsibility for the project or the risk that the derivative transaction relates to can move to another department. They stated that at present, the reporting arrangements would remain with the minister that originally entered into the transaction.[271]

The department advised:

> *The purpose of this amendment is to clarify that that reporting responsibility can be transferred to the new minister for the department that the derivative transaction has moved to.*[272]

[268] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 51
[269] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 51
[270] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 20
[271] Mr Miller, Queensland Treasury, Public Briefing Transcript 10 April 2015: 9
[272] Mr Miller, Queensland Treasury, Public Briefing Transcript 10 April 2015: 9

Clause 58 inserts a new section 88A as follows:

> **88A Transfer of involvement in company to another department**
>
> (1) This section applies if -
>
> (a) an approval is given for a department (the ***first department***) under section 88(1); and
>
> (b) because of a redistribution of public business of departments, the first department's involvement in a company becomes the responsibility of another department (the ***second department***).
>
> *Example -*
>
> Following a machinery of government change, the second department replaces the first department as the member of a company. The second department need not comply with section 88(1), but must comply with subsections (2) and (3).
>
> (2) The second department must, within 4 months after the redistribution of public business of departments mentioned in subsection (1)(b), apply for a Treasurer's approval for the second department's proposed action in relation to the company.
>
> *Examples of proposed actions -*
>
> continue as a member of a company, wind up or sell the company
>
> (3) The second department may continue as a member of the company only under a Treasurer's approval.
>
> (4) The Treasurer may give an approval for subsection (3) only if the department has developed a business case that satisfies the Treasurer the continued membership is appropriate.

The explanatory notes state that proposed new section 88A addresses the movement of ownership of companies between departments. The notes outline:

> *The purpose of this section is to streamline the requirements as a strict interpretation of section 88 could create a number of administrative difficulties in the management and administration of companies that are transferred between departments as a result of a machinery of Government change.*[273]

The Committee asked Queensland Treasury to clarify what is meant by administrative difficulties and how these would be rectified by the amendments. Queensland Treasury explained that when a company is transferred between departments following a machinery of government change, for example, the Treasurer's approval is required before that transfer can happened. The department stated:

> *In standard practice, departments are not aware of machinery of government changes that are forthcoming and are not typically consulted in those changes, so it seems unreasonable for a department to have to seek approval for a transfer that they are not currently aware of. Following the machinery of government change, the intention is to provide them with four months to consider whether they think their participation in that business is the way to go forward and if so, to then seek the Treasurer's approval and prepare a business case to support that*.[274]

7.5 Committee comments

The Committee is satisfied the proposed amendments to the *Financial Accountability Act 2009* are of an administrative nature and are appropriate.

[273] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 20
[274] Mr Miller, Queensland Treasury, Public Briefing Transcript 10 April 2015: 10

8 Examination of the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015* – Amendment of *First Home Owner Grant Act 2000* – clauses 59 to 61

The explanatory notes outline that the amendments to the *First Home Owner Grant Act 2000* (FHOG Act) are to be amended to ensure the statutory discretion is given to the Commissioner of State Revenue (the Commissioner) to vary the period of, or exempt an applicant from, the residence requirements which form part of the eligibility criteria under the FHOG Act, can be exercised at any time.

Clause 59 amends the FHOG Act. Clause 60 inserts a new subsection to section 15 as follow:

> **Clause 60 Amendment of s 15 (Criterion 5 – Residence requirements)**
>
> Section 15 -
>
> *Insert* -
>
> (5) The commissioner may give an approval or exemption under subsection (2), (3) or (4) at any time, even if the period to which the approval or exemption relates has ended.

The explanatory notes stipulate that an application, as part of the eligibility criteria for a grant under this Act, must comply with the residence requirements in section 15 below:

> *(1) An applicant for a first home owner grant must occupy the home to which the application relates as the applicant's principal place of residence for a continuous period of at least 6 months*.[275]

Proposed new section 15(5) stipulates that the Commissioner may give an approval or exemption under section 15 (2), (3) or (4) at any time, even if the period to which the approval or exemption relates has ended.[276]

The explanatory notes also outline that the amendments are to ensure the statutory discretion given to the Commissioner to vary the period of, or exempt an applicant from, the residence requirements which form part of the eligibility criteria can be exercised at any time. This amendment will apply retrospectively in accordance with an existing administrative arrangement.[277]

Clause 61 inserts new part 12, section 82 as follows:

> **Clause 61 Insertion of new pt 12**
>
> After part 11 -
>
> *Insert* –
>
> ***Part 12 Transitional provision for Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015***
>
> ***82 Application of s 15***
>
> *Section 15(5) applies in relation to an approval or exemption given by the commissioner on or after 4 July 2013.*

This is a transitional provision with the effect that section 15(5) applies in relation to an approval or exemption given by the Commissioner on or after 4 July 2013.[278]

[275] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 51
[276] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 51
[277] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 2
[278] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 2

Master Builders Association Queensland (Master Builders) expressed concerns over the definition of 'new home' in the Act and considers that the Act adopts a different approach to the National Construction Code (NCC) and the Queensland Building and Construction Commission (QBCC).[279]

The Committee understands that this is not within the scope of this Bill, but sought clarification from the department regarding the definition of 'new home'. Queensland Treasury clarified that the query relates to existing provisions that are in the first home owner grant legislation and not to the amendment being brought forward to this Bill. The department stated:

> *When the first home owner grant changes were made to remove the availability of the grant for what is classed as existing homes and limit it only to new homes, changes were made in relation to those definitions. In particular, previously there was a provision that related specifically to what is classed as relocatable homes. In determining the policy parameters of those amendments, it was decided that relocatable homes were not new homes. The purpose of the amendments to those provisions was to promote benefits to the construction industry, and it was considered that those were best targeted to the stricter, traditional definition of new home. The provision that was related specifically to relocatable homes was removed as part of that exercise. The current position from the Office of State Revenue is that the current eligibility for FHOG in relation to new homes does not extend to relocatable homes.*[280]

The department explained that:

> *…prior to 2012, when the FHOG was available for new and existing homes, a contract for the purchase of a relocatable home was treated as a contract to have a home built. However, when FHOG was restricted to new homes only (Great Start Grant), this particular provision of the FHOG Act was removed.*[281]

The department acknowledged that relocation of a home results in spending and employment in the housing construction sector. However, the department explained that there is a broad range of what could be considered a relocatable home.[282]

> *For example, any of the following is a relocatable home –*
>
> - *A house that is relocated and affixed to a new parcel of land without significant modification other than connection to plumbing, drainage and electrical services.*
> - *A house that is relocated and affixed to a new parcel of land by elevated stumps and significantly renovated including a adding a further story underneath.*
> - *An uninhabitable house bought from another parcel of land and relocated and affixed to a new parcel of land and building works are undertaken to build up the house to a habitable state capable of obtaining relevant local government approvals.*
> - *A buyer purchases two small houses (which were previously fixed to land at different locations), relocates them to a new parcel of land and fixes them to the new land as a single attached dwelling.*

[279] Master Builders, Submission 1: 1
[280] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 5
[281] Ms Kross, Queensland Treasury, Public Briefing Transcript 10 April 2015: 11
[282] Correspondence to FAC from Queensland Treasury, dated 15 May 2015: 4

> - *A house is brought from another parcel of land where it has been used as a home immediately prior to the sale, then partly dismantled and relocated to a new parcel of land, where it is subsequently reassembled.*
>
> *When considering any of these possible scenarios, it is a question of fact and degree as whether the policy intent of the QBBG and Great Start Grant are met.*[283]

The department advised:

> *Revenue administration policy is designed based on principles of simplicity, efficiency and equity. In particular, certainty is paramount for revenue matters whether this is certainty of how much you are obliged to pay or whether you may be eligible for a grant or other concession. Adoption of the above approach would result in uncertainty for applicants and their lenders who could not proceed with any certainty as to eligibility until after an assessment had taken place based on the facts and the question of degree. Also, these principles are challenged if revenue officers (unqualified in the construction industry) were to be required to decide eligibility for FHOG based on assessment of these facts.*[284]

Master Builders responded that whilst they support the government's policy objective to stimulate the Queensland housing market, they argue that rather than it being a question of degree, each scenario does in fact realise the policy intent of the legislation to target new housing stock. They advised:

> *Each scenario would be subject to the relevant demolition controls and once relocated, require building approval consistent with the current provisions of the Building Code of Australian (BCA). With the BCA being regularly being updated it is reasonable to expect that any relocated structure would have to undergo significant modification to meet current standards. In our experience the relocated structure always requires further rectification. In addition, in almost all cases, relocating causes damage to the integrity of the building requiring further work. That is, there is no scenario where it would just be a case of "connecting to plumbing, drainage and electrical services".*[285]

8.1 Committee comments

The Committee is satisfied that the amendments to the *First Home Owner Grant Act 2000* are appropriate.

One stakeholder provided comment on the definition of 'new home' contained within the Act. Whilst not within the scope of the Bill, the Committee agreed to investigate this issue further. The Committee found that the purpose of the First Home Owner Grant is to develop new housing stock and it agreed that whilst substantial work may be undertaken on a relocated home it does not increase new housing stock as part of that process. The Committee agreed that the definition was appropriate given the stated purpose of the Act.

[283] Ms Kross, Queensland Treasury, Public Briefing Transcript 10 April 2015: 11
[284] Ms Kross, Queensland Treasury, Public Briefing Transcript 10 April 2015: 11
[285] Correspondence to FAC from Master Builders Qld, dated 18 May 2015: 1

9 Examination of the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015* – Amendment of *Payroll Tax Act 1971* – clauses 62 to 70

The Treasurer stated when introducing the Bill that the Bill seeks to implement the government's 2015 election commitments to provide a payroll tax rebate for apprentice and trainee wages. The stated:

> *This government recognises that apprenticeships and traineeships provide a great employment pathway, particularly for young Queenslanders. This in turn contributes to the development of a highly skilled workforce to permit delivery of projects to ensure Queensland's economic growth into the future.*
>
> *As an incentive to employers to hire apprentices and trainees, the government's election commitments included the introduction of a 25 per cent payroll tax rebate on the wages of apprentices and trainees, funded over three years, in addition to the existing exemption for apprentice and trainee wages. This commitment is delivered through extending the application of provisions introduced by a former Labor government, providing an apprentice and trainee wages rebate for the 2009-10, 2010-11 and 2011-12 financial years. As amended, the provisions will now also apply for the 2015-16, 2016-17 and 2017-18 financial years. This will capitalise on existing systems and administrative frameworks in place for the earlier rebate, minimising implementation costs and utilising a model familiar to Queensland employers.*[286]

9.1 Amendment of Payroll Tax – Clauses 62 (Act amended) and 63 (Amendment of section 13B) (Meaning of relevant contract)

Clause 62 provides that the part amends the *Payroll Tax Act 1971*. Clause 63 amends section 13B to clarify the operation of the payroll tax contractor liability provisions. The explanatory notes outline that current section 13B(2)(d)(i) of the *Payroll Tax Act 1971* provides that a contract is not a relevant contract for the purposes of the contractor provisions if it relates to services supplied by an owner driver (owner-driver exemption).[287]

Clause 63(1) amends current section 13B(2)(d)(i) to clarify:

> *…for the purposes of the owner-driver exemption, a relevant contract does not include a contract under which the principal is supplied with services solely for the conveyance of goods, or services that are ancillary to that conveyance, using a vehicle provided by the person conveying the goods.*[288]

The explanatory notes state that contractor exemptions are intended to operate on the basis that payments under a contract are either fully exempt or fully taxable if the contract does not wholly satisfy the conditions specified for the particular contractor exemption. Full exemption applies when the contract falls within the relevant exemption.[289]

[286] Queensland Legislative Assembly, Hon CW Pitt MP, Treasurer, Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill Introduction, *Parliamentary Debates (Hansard)*, 27 March 2015: 235
[287] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 51
[288] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 51
[289] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 17

The explanatory notes outline:

> *The Bill makes amendments to put beyond doubt that the contractor exemptions require the contract as a whole to qualify for the exemption, rather than being applicable to a portion of payments under the contract.*[290]

The explanatory notes also stipulate that the amendments have effect for work performed on or after commencement of the Bill, regardless of when amounts are paid or become payable for the performance of the work.[291]

9.2 Amendment of Payroll Tax – Clause 64 to 67 – Clause 64 Amendment of s 14 (Exemption from payroll tax)

Clause 64 amends section 14 of the *Payroll Tax Act 1971*. Section 14 provides an exemption from payroll tax in certain circumstances. The explanatory notes state clause 64(1) omits subsection 14(4) due to redundancy and clause 64(2) amends section 14(5) to omit the word "also" which referred back to subsection (4), and is therefore no longer required because of the removal of subsection (4). The explanatory notes also outline that clause 64(3) amends subsection 14(7) to omit a reference to subsection 14(4) due to the removal of that subsection.[292]

Clause 64(4) amends subsection 14(9) to insert new definitions of certificate II traineeship, certificate III traineeship and Australian Qualifications Framework as follows:

> **Clause 64 Amendment of s 14 (Exemption from payroll tax)**
>
> (4) Section 14(9) -
>
> *Insert -*
>
> ***Australian Qualifications Framework*** has the meaning given under the *Higher Education Support Act 2003* (Cwlth), schedule 1.
>
> ***certificate II traineeship*** means a traineeship leading to a certificate II qualification under the Australian Qualifications Framework.
>
> ***certificate III traineeship*** means a traineeship leading to a certificate III traineeship qualification under the Australian Qualifications Framework.

The Committee queried the reasons for the traineeship payroll tax exemption as outlined in Clause 64. Queensland Treasury advised that the amendment applies to the apprentices and trainees exemption itself, not the rebate. The department explained that the amendment is an administration investment. They stated:

> *When these provisions were originally introduced, certain provisions were included so that people would not take someone who was effectively an employee and do what we called a 'Friday-Monday', which meant that they were an employee on Friday, and suddenly an apprentice or trainee on Monday. There were certain anti-avoidance provisions introduced when the exemption provisions were inserted. Some of those just by effluxion of time no longer had any relevance because they were tied to people moving between different levels of certificate study in apprenticeships. There is one provision that we are removing that, just by effluxion of time, is no longer relevant.*[293]

[290] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 18
[291] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 18
[292] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 52
[293] Ms Kross, Queensland Treasury, Public Briefing Transcript 10 April 2015: 8

9.3 Amendment of Payroll Tax – Clause 65 Amendment of section 27A (Rebate for periodic liability), Clause 66 Amendment of section 35A (Rebate for annual payroll tax amount), Clause 67 Amendment of section 43A (Rebate for final payroll tax amount), Clause 68 Amendment of section 49A (Definitions for div 6A)

In his introductory speech, the Treasurer explained that these amendments extend the application of the provisions to apply for the 2015-16, 2016-17 and 2017-18 financial years.[294]

Clause 65 amends section 27A to extend the application of a rebate on qualifying wages paid or payable to apprentices or trainees for certain periodic return periods to a periodic return period in a financial year ending 30 June 2016, 2017 or 2018.[295]

Clause 66 amends section 35A to extend the application of a rebate on qualifying wages paid or payable to apprentices or trainees for an annual payroll tax amount for certain financial years, to an annual payroll tax amount for a financial year ending 30 June 2016, 2017 or 2018. Clause 67 amends section 43A to extend the application of a rebate on qualifying wages paid or payable to apprentices or trainees for a final payroll tax amount for a final period in certain financial years, to a final payroll tax amount for a final period in a financial year ending 30 June 2016, 2017 or 2018.[296]

The explanatory notes state that as part of the 2015 election campaign, the Government announced a payroll tax incentive of a 25 per cent rebate on wages paid by an employer to apprentices and trainees, in addition to the existing exemption from payroll tax for these wages, funded for a three year period. The explanatory notes outline that a similar rebate for the 2009-10, 2010-11 and 2011-12 financial years is provided by existing provisions (sections 27A, 35A, 43A and Division 6A, Part 2).[297] The Bill makes amendments to extend these provisions to the 2015-16, 2016-17 and 2017-18 financial years.[298]

The Committee asked Queensland Treasury to expand on the reasons for the amendments. The department advised that the amendments arose from a case in New South Wales (the Smith's Snackfood case). They stated:

> *In that case the particular taxpayer basically claimed that they could use the contractor exemption provisions by applying it to a proportion of the amounts that were paid, whereas the intention behind the contractor exemption provisions was either the contract was entirely exempt, or if it was not entirely exempt, then you had to pay payroll tax on it. That was originally successful, which is why New South Wales moved to amend its provisions. On appeal it was overturned so that the original intended operation of the provisions was confirmed; however, in that time Victoria had already moved to amend. Because we are trying to maintain, as much as possible, a harmonised approach in relation to payroll tax, it was considered better that our provisions be amended so on their face they remained harmonised with the New South Wales and Victorian provisions so there was not any confusion for taxpayers out there. It really is just to ensure the correct operation and to maintain harmonisation.*[299]

[294] Queensland Legislative Assembly, Hon CW Pitt MP, Treasurer, Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill Introduction, *Parliamentary Debates (Hansard)*, 27 March 2015: 235

[295] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 52

[296] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 52

[297] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 17

[298] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 16

[299] Ms Kross, Queensland Treasury, Public Briefing Transcript 10 April 2015: 8

The Committee received several submissions supporting the amendments. The National Retailers Association (NRA) explained that the proposed payroll tax rebate is likely to encourage retailers and service industries in Queensland to engage more apprentices and trainees during the three year period over which this incentive will apply. They stated:

> *This will assist in increasing levels of employment in Queensland – particularly of younger workers – and in the NRA's view, will improve the quality of services provided by those employees once they complete their apprenticeship or traineeship. This can only have positive effects on businesses employing those workers and on the Queensland economy in general.*[300]

All Trades Queensland strongly supported the amendment to implement the rebate. They emphasised that it is particularly significant to a business model, such as theirs, which centres on employing apprentices and trainees. They consider that the amendments to be timely in view of the Federal Government's withdrawal of its support for Joint Group Training Funding from 1 July.[301]

CCIQ considers that the provision of a payroll tax rebate to be an excellent example of good policy that provides employers with a financial incentive to continue training skilled workers of the future. However, they outlined that they consider there are limitations in this initiative.[302] CCIQ submitted:

> *The benefit of a payroll tax rebate is limited in that the rebate will only be accessible to businesses that have an annual wages bill over $1.1 million and are consequently required to pay payroll tax. At present, only 11,000 Queensland businesses are required to pay payroll tax, representing only three per cent of Queensland's business community.*
>
> *Thus, with only a minor proportion of Queensland's business community eligible to benefit from this payroll tax rebate initiative, the opportunity to meaningfully impact apprentice and trainee numbers is significantly diminished, with the State Government relying on this demographic alone to increase their intake of apprentices and trainees.*[303]

Queensland Treasury explained that the payroll tax rebate represents only one part of the Government's Working Queensland Plan and other measures to support apprentices and trainees include:

- *Ensuring 10 per cent of workers on major projects are apprentices and trainees.*
- *Establishing Jobs Queensland – an industry-led body tasked with advising the Government on current and future skills demand, and long-term workforce planning and skills investment.*[304]

CCIQ suggested that financial incentive payments to employers that are accessible to all businesses would have a more meaningful impact. They advised that the previous pledge (i.e. $6,000 payment for hiring an apprentice or trainee) was fully subscribed, resulting in 6,000 new apprentices.[305]

Master Builders advised that they would like to see the eligibility criteria changed to cover existing employees. They stated that their industry has a history of employing people to 'give them a go' and they then become apprentices but they are not eligible because they were with the company before the scheme commenced.[306]

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300 National Retail Association, Submission 3: 8
301 All Trades Queensland, Submission 7: 1-2
302 Chamber of Commerce and Industry Queensland, Submission 8: 3
303 Chamber of Commerce and Industry Queensland, Submission 8: 3
304 Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 36
305 Ms Lawless, Transcript 6 May 2015 (1): 5
306 Mr Bidwell, Transcript 6 May 2015 (1): 4

Queensland Treasury advised, in response to this issue, that:

> *The exclusion in section 14(3) of the Payroll Tax Act 1971 was inserted in 2002 by the Treasury Legislation Amendment Bill 2002 to refine the apprentices and trainees exemption, after it was detected that some employers were converting existing employees to trainees to avoid payroll tax.*
>
> *In making the amendment, the apprentices and trainees exemption was, however, to continue to be allowed to apply to wages paid to trainees who are existing workers in certain circumstances, such as where the employee progresses from a Certificate II to a Certificate III traineeship in the same qualification stream.*
>
> *The exclusion in section 14(3) of the Payroll Tax Act 1971 reflects the intended policy and operation of the legislation, and any variation from that would require a change of government policy.*[307]

The explanatory notes state that the exemption is not granted when an existing employee of an employer commences a traineeship to prevent abuse and section 14(4) and section 14(5) provide for an exception to this rule.[308] Sections 14(4) and 14(5) outline the exemption as follows:

(4) Despite subsection (3), the exemption given in subsection (2)(j) applies to wages paid or payable to the trainee under the current traineeship if -

*(a) before the commencement of subsection (3), the trainee started, with the employer, a traineeship for a certificate II qualification established under a national program administered under the Australian National Training Authority Act 1992 (Cwlth) (a **certificate II traineeship**); and*

*(b) the current traineeship is a traineeship for a certificate III qualification (a **certificate III traineeship**) in the same training package or occupational stream as the certificate II traineeship; and*

(c) the trainee starts the current traineeship within 1 year after obtaining the certificate II qualification.

(5) Also, despite subsection (3), the exemption given in subsection (2)(j) applies to wages paid or payable to the trainee under the current traineeship if –

(a) after the commencement of subsection (3), the trainee started, with the employer, a certificate II traineeship and subsection (2)(j) applied to wages paid or payable to the trainee under the certificate II traineeship; and

(b) the current traineeship is a certificate III traineeship in the same training package as the certificate II traineeship; and

(c) the trainee starts the current traineeship within 1 year after obtaining the certificate II qualification.[309]

Queensland Treasury also explained that when the rebate provisions were originally inserted, there were anti-avoidance provisions introduced.[310]

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[307] Correspondence to FAC from Queensland Treasury, dated 4 May 2015: 15

[308] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 18

[309] *Payroll Tax Act 1971*: 56-57

[310] Ms Kross, Queensland Treasury, Public Briefing Transcript 10 April 2015: 8

9.4 Amendment of Payroll Tax – Clause 69 Insertion of new pt 12

Clause 69 inserts a new part 12 into the *Payroll Tax Act 1971* providing for the transitional application of the amendments to section 13B. Section 144(1) as inserted provides that section 13B (Meaning of relevant contract) as amended applies in respect of work performed on or after the commencement of the Bill, regardless of when amounts are paid or become payable for the performance of the work.[311]

Proposed new section 144 (Clause 69) outlines:

> **Clause 69 Insertion of new pt 12**
>
> After part 11 -
>
> *Insert -*
>
> **Part 12 Transitional provision for Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015**
>
> **144 Application of s 13B**
>
> (1) Section 13B, as amended by the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015*, applies in respect of work performed on or after the commencement, regardless of when amounts are paid or become payable for the performance of the work.
>
> (2) To remove any doubt, it is declared that section 13B as in force immediately before the commencement continues to apply in respect of work performed before the commencement, regardless of when amounts are paid or become payable for the performance of the work.

9.5 Committee comments

The Committee heard evidence that showed support for providing pay roll tax rebates to employers to employ apprentices and trainees. However, some of the stakeholders considered that the rebates do not go far enough as it is limited to employers who actually pay payroll tax. Stakeholders reported that payroll tax paying employers make up on a small proportion of all employers.

The Committee noted that any extension of incentives beyond the pay roll tax rebates is beyond the scope of the Bill. However, the Committee agreed that it is worthwhile that the Minister consider investigating additional alternatives that may increase the employment opportunities of apprentices and trainees. These alternatives may include those outlined by CCIQ in its testimony, such as the fully subscribed initiative to award $6,000 to employers for each apprentice or trainee hired, which resulted in 6,000 new apprentices or trainees.

> **Recommendation 5**
>
> The Committee recommends that the Minister consider investigating additional methods of increasing the employment opportunities of apprentices and trainees.

10 Examination of the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015* – Amendment of *Plumbing and Drainage Act 2002* clauses 71 to 74

10.1 Background

In 2014, the then government introduced the *Water Supply Services Legislation Amendment Bill 2014*. This Bill was considered by the former State Development, Infrastructure and Industry Committee (SDIIC).

[311] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 52

In considering the Bill the SDIIC found that the introduction of the *Water Supply (Safety and Reliability) Act 2008* (WSA) in 2008 created an ambiguity between its provisions and the *Plumbing and Drainage Act 2002* (PDA) relating to the lawfulness of certain persons installing water meters. In particular, whether a licensed plumber was required by law to install a water meter or whether this could be undertaken by an authorised person appointed by a water service provider.[312]

Section 35(1) of the WSA provided that a service provider was allowed to install or approve the installation of a water meter on infrastructure supplying water to premises. The Act allowed that the meter is the property of the service provider even if it was installed inside the boundary of the premises. The Act empowered an authorised person to read, maintain or replace a water meter.[313]

At the same time the PDA required that plumbing work, which was defined as installing, changing, extending, disconnecting, taking away and maintaining plumbing, must be undertaken by a person holding a plumbing licence. It is an offence under PDA to undertake plumbing work without a licence. Section 121 provides for certain exemptions for this offence.[314]

The SDIIC report notes that the Acts could not be easily read together and that it could be argued either way that a person needs a plumbing licence to install a water meter or that authorised persons can perform this work.[315]

The 2014 Bill sought to rectify this discrepancy by amending section 121 of the PDA to include an offence excuse for:

> *(e) the installation, and any work relating to the installation, of a relevant water meter by an authorised person under the Water Supply Act, section 35.*[316]

All submissions to the SDIIC inquiry from the plumbing industry did not support the amendment, whilst the LGAQ and qldwater advocated in favour of the amendment.[317]

SDIIC noted that the concerns from the plumbing industry surrounding issues of loss of work and future changes. There were also concerns that the changes leading to other areas of plumbing work being deregulated. SDIIC reported that qualifications and training issues were also of a concern to stakeholders, who drew attention to the differences in skill and training undertaken by licensed plumbers and water industry workers and emphasised that licensed plumbers were more skilled to undertake water meter installations.[318] Public health concerns were considered to be an issue by some stakeholders although the DEWS and Department of Health advised that there would not be any risk to public health.[319]

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[312] State Development, Infrastructure and Industry Committee, Report No 36, *Water Supply Service Legislation Amendment Bill 2014*, March 2014: 3

[313] State Development, Infrastructure and Industry Committee, Report No 36, *Water Supply Service Legislation Amendment Bill 2014*, March 2014: 3

[314] State Development, Infrastructure and Industry Committee, Report No 36, *Water Supply Service Legislation Amendment Bill 2014*, March 2014: 3

[315] State Development, Infrastructure and Industry Committee, Report No 36, *Water Supply Service Legislation Amendment Bill 2014*, March 2014: 4

[316] *Water Supply Service Legislation Amendment Bill 2014, clause 44*

[317] State Development, Infrastructure and Industry Committee, Report No 36, *Water Supply Service Legislation Amendment Bill 2014*, March 2014: 4

[318] State Development, Infrastructure and Industry Committee, Report No 36, *Water Supply Service Legislation Amendment Bill 2014*, March 2014: 5-6

[319] State Development, Infrastructure and Industry Committee, Report No 36, *Water Supply Service Legislation Amendment Bill 2014*, March 2014: 9

10.2 Amendment of *Plumbing and Drainage Act 2002* – clauses 71 to 74

The Treasurer stated in his introductory speech that the amendments to the *Plumbing and Drainage Act 2002* and the *Water Supply (Safety and Reliability) Act 2008* will ensure that the installation of water meters is to be performed by a licensed plumber.[320]

Clause 72 proposes to omit section 121(1)(e) which is the section which was inserted in the Act during the 2014 amendments in the *Water Supply Services Legislation Amendment Bill 2014* and inserts a new section 121(1)(e) as follows:

> *(e) the removal, repair or replacement, and any work relating to the removal, repair or replacement, of a relevant water meter by an authorised person.*

The explanatory notes state:

> *Subsection 121(1)(e) previously provided an exemption from the offence provisions under section 119 and section 120 of the Plumbing and Drainage Act 2002. This exemption allowed an authorised person, which was appointed by a service provider, to install a relevant water meter without committing an offence under the Plumbing and Drainage Act 2002. By removing this exemption, the offence provisions in section 119 and section 120 apply to the installation, and any work relating to the installation, of a water meter.*[321]

Clause 74 amends the definition of plumbing work in the schedule (Dictionary) to make it clear that plumbing work includes installing a water meter as part of a service provider's infrastructure for the purpose of measuring the volume of water supplied to premises from the infrastructure.[322]

Clause 73 contains the transitional provisions which provide for an authorised person to have a two year transitional period in which they may continue to install relevant water meters, provided that certain preconditions are met. The explanatory notes state that the transitional provisions provide that a person does not commit an offence against section 119 or 120 if the work performed is:

- *the installation of a relevant water meter by an authorised person under section 35 of the Water Supply (Safety and Reliability) Act 2008; and*
- *the person performing the work was an authorised person of a service provider immediately before the commencement of this section; and*
- *the person performs the installation as an authorised person of a service provider within two years of commencement of this section.*[323]

As the amendments to the *Plumbing and Drainage Act 2002* (clauses 71 to 74) are related to the amendments to the *Water Supply (Safety and Reliability) Act 2008*, these amendments will be examined further and considered in conjunction with section 11 of this report.

10.3 Committee comments

As the amendments to the *Plumbing and Drainage Act 2002* (clauses 71 to 74) are related to the amendments to the *Water Supply (Safety and Reliability) Act 2008*, these amendments will be examined further and considered in conjunction with section 11 of this report and the Committee's comments are included in that section.

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[320] Queensland Legislative Assembly, Hon CW Pitt MP, Treasurer, Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill Introduction, *Parliamentary Debates (Hansard)*, 27 March 2015: 236

[321] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 53

[322] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 53

[323] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 53

11 Examination of the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015* – Amendment of *Water Supply (Safety and Reliability) Act 2008* – clauses 84 to 87

11.1 Amendment of *Water Supply (Safety and Reliability) Act 2008* – clauses 84 to 86

The Department of Housing and Public Works (DHPW) explained that legislative amendments in 2014 removed the requirement for water service providers to engage a licensed plumber to install their water meters. DHPW advised that this bill amends the definition of 'plumbing work' to make it clear that installation of a water meter is plumbing work that can only be performed by a licensed plumber.[324]

The explanatory notes state that Clause 85 amends section 35 to omit the word 'particular' from the note in subsection 35(2). This amendment makes it clear that, under sections 119 and 121 of the *Plumbing and Drainage Act 2002*, a licence may still be required to install meters.[325]

The explanatory notes also outline that clause 86 amends section 36 to omit subsection 36(1)(c), which provided that an authorised person employed by a service provider may enter a place to install a meter at the place.[326]

DHPW advised the Committee that the current amendments are supported by the majority of stakeholder groups consulted.[327]

The qldwater submission would mean that it supports the Committee in making its recommendations to Parliament.[328] However they disagree with the explanatory notes, which state:

> *The Government made an election commitment to restore high standards in Queensland's plumbing industry by requiring the installation of water meters to be performed by a fully qualified and licensed plumber. The Bill will realise this election commitment.*

The qldwater submission emphasised:

> *The policy objective clearly supports the re-establishment of a protected market for plumbers for work which is more appropriately managed by water service providers. It has been developed under the false premise of improvement to public safety. By adopting this position, the Queensland Government is ignoring industry best practice in Australia and internationally.*[329]

However, they are pleased that the changes proposed in the Bill do not reintroduce any of the role ambiguity which existed between the two Acts prior to the June 2014 amendments. They stated:

> *The role of plumbers versus authorised persons is clear, limited to meter installation (not ongoing maintenance and meter replacement) as was the original regulatory intent and this must be maintained.*[330]

[324] Mr Essery, Department of Housing and Public Works, Public Briefing Transcript 10 April 2015: 3
[325] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 53
[326] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 53
[327] Mr Essery, Department of Housing and Public Works, Public Briefing Transcript 10 April 2015: 3
[328] Queensland Water Directorate, Submission 5: 1
[329] Queensland Water Directorate, Submission 5: 2
[330] Queensland Water Directorate, Submission 5: 2

The Committee received a submission from a plumber which highlighted the importance of installation of water meters by a fully qualified and licensed plumber, instead of engaging an authorised person.[331] Similarly, the Master Plumbers' Association of Queensland (MPAQ) and the Plumbers Union Queensland supported the amendments.[332]

The Queensland Urban Utilities (QUU) advised that they were pleased that the Bill clarifies the role of a plumber relates to meter installation and not to repair, maintenance or replacement of a meter. QUU was also pleased to note:

> *…the proposed definition of "plumbing work" in the Bill and the Explanatory Notes for the Bill (page 54), has clarified that the installation of bulk and other water meters which form part of Queensland Urban Utilities' broader network and which are not relevant water meters, is not installation work which would require a licensed plumber to handle.*[333]

The LGAQ however iterated their concerns that the amendments will have an impact on councils and water service providers in that they currently have a choice as to the use of licensed plumbers or authorised officers. The LGAQ explained that in some rural and regional council areas, there are either no or few licensed plumbers either employed by council or in the private sector.[334]

The LGAQ emphasised that the amendments:

> *…could pose some significant costs and delays for people in localities where plumbers do not exist.*[335]

The LGAQ provided an example from 'Wujal Wujal Aboriginal Shire Council who confirmed that they pay $60 per hour for a licensed plumber from Cooktown, or Cairns'. LGAQ also explained that:

> *…typically there is a 3 week wait so the Wujal Wujal Aboriginal Shire Council batch a number of jobs at once.*[336]

The LGAQ stated:

> *The Council pays for all expenses and travel time on top of wages. For example, a 3 day visit for a total of 24 hours would cost approximately $2900 (including travel, meals, and accommodation). If there was an urgent single meter installation it would cost in excess of $300 for 3 hours labour plus expenses.*[337]

The Committee asked QUU if they foresee any skills shortage if water meter installation work could only be undertaken by licensed plumbers. The QUU advised that they have existing contracts in place. The QUU stated:

> *So we have commercial firms that have their own plumbers on site and we understand that about 75 to 80 per cent of those firms have accredited plumbers or certified plumbers doing that work. So the time duration of actually architecting the transition is for those firms to actually understand what would be required in terms of that plumbing work to do the work and, secondly, to renegotiate those contracts and any price impacts that would occur through that process. So they are the activities that would have to occur through that transition period.*[338]

[331] Hintercoast Plumbing and Gas, Submission 9
[332] Master Plumbers Association of Queensland, Submission 9 and Plumbers Union Queensland, Submission 18
[333] Queensland Urban Utilities, Submission 15: 2
[334] Mr Hoffman, Transcript 6 May 2015 (2): 2
[335] Mr Hoffman, Transcript 6 May 2015 (2): 7- 8
[336] Correspondence to FAC from the Local Government Association of Queensland, dated 13 May 2015: 1
[337] Correspondence to FAC from the Local Government Association of Queensland, dated 13 May 2015: 1
[338] Mr Belz, Transcript 6 May 2015 (2): 12

The Committee asked whether the work that is being carried out by licensed plumbers could be done by someone who is well trained in a specific role (for example installing water meters) and who is not a licensed plumber. The MPAQ provided an example where meter installation work had been carried out by an unlicensed plumber and had resulted in water supply problems.[339] The MPAQ stated:

> *A few years ago now my water meter at home was replaced by a young chap—he was about 30. I have been a plumber for 25 years. He replaced the meter much quicker than I ever could. He took 15 or 20 minutes. He was a nice fellow. I went out and had a chat to him. He was not a licensed plumber. I stepped inside for a couple of minutes and came back out again and he had already gone. I did not have water in the kitchen, bathroom or toilet because of the debris that had come down the line. That was a not major issue for me as Duncan was alluding to before with water bills. If I were not a plumber I would then have had to chase QUU or chase a plumber to come and repair it.*[340]

The Plumbers Union Queensland reiterated their objections to the 2014 amendments and their concerns about cross-contamination of water supply which has occurred as a result of work undertaken by unlicensed plumbers.[341] They provided a number of examples of incidents where water supply was compromised.[342]

The Committee sought written information from the MPAQ who provided further details on the cross-connection incidences. The MPAQ alleged that there are considerably more cases of cross or poor connections that go unreported and which are repaired by MPAQ members, licensed plumbers and plumbers within councils.[343]

The LGAQ refuted this. They stated that they and qldwater are unaware of any issues that have resulted in contamination due to improper installation of water meters. The LGAQ also emphasised that problems with meter installation have never been raised as a major issue across the industry during the periods in which installation was able to be conducted by authorised persons.[344]

The QUU provided the number of customer complaints relating to potentially faulty water meters for the last two financial years as follows:[345]

YEAR	COMPLAINTS
2013/2014	89
2014/2015	146

The QUU explained that these complaints include matters beyond their initial installation of a water meter, including the age of the meter, consumption, misreads and other matters outside of QUU's control (including defective manufacture, force majeure events, weather issues of defective installation by development industry).[346]

[339] Mr Kretschmer, Transcript 6 May 2015 (2): 10
[340] Mr Kretschmer, Transcript 6 May 2015 (2): 10
[341] Plumbers Union Queensland, Submission 18: 2
[342] Ms Palmer-Bright, Transcript 6 May 2015 (2): 8
[343] Correspondence to FAC from the Master Plumbers' Association of Queensland, dated 12 May 2015: 1
[344] Correspondence to FAC from the Local Government Association of Queensland, dated 13 May 2015: 2
[345] Correspondence to FAC from the Queensland Urban Utilities, dated 14 May 2015: 2
[346] Correspondence to FAC from the Queensland Urban Utilities, dated 14 May 2015: 2

11.2 Amendment of *Water Supply (Safety and Reliability) Act 2008* – clause 87

Clause 87 inserts a new chapter 10, part 9, which contains two-year transitional provisions as follows:[347]

> **Clause 87** Insertion of new ch 10, pt 9
>
> Chapter 10 -
>
> Insert -
>
> Part 9 Transitional provision for Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015
>
> 672 Authorised person's power to enter places
>
> For 2 years after the commencement, section 36(1) is taken to include the power for an authorised person to enter a place to install a meter at that place.

DPHW explained that service providers were displeased with the change and had reservations about the transitional aspects. The department stated:

> *…hence why we have inserted a provision in the bill to transition this process over a two-year period, which gives particularly the bulk service providers and the councils the opportunity to re-adjust their programs, re-adjust their management practices and so forth and also use this as an opportunity to transition some of the water service officers perhaps into further skilling through plumbing apprenticeships and traineeships and so forth and provide them with a way forward for a new job perhaps beyond that work as well.*[348]

DHPW also advised that these measures are designed to minimise disruption to the industry and consumers as a result of the new arrangement.[349]

The Plumbers Union Queensland's submission argued that a person wishing to install water meters should require a plumber's licence, which entails the completion of a Certificate III in Plumbing and completion of a four year apprenticeship. The Plumbers Union Queensland supported the inclusion of a two year transitional arrangement in order to allow this review to be undertaken and any required changes implemented.[350]

The QUU stated that they were concerned that they would not be in a position to immediately comply with the proposed obligations once the Bill is enacted. Therefore, the QUU are supportive of the two year transitional provision as this would allow them to manage the changes to their business by the expiry of the transitional period.[351]

The MPAQ has concerns about the transitional period and considers two years is excessive. The MPAQ explained that it is anticipated that it should take no longer than six months to transition over into an apprenticeship.[352]

QUU explained that reducing the transitional period would not be beneficial to them. They note that transition of individuals to an apprenticeship could take place within six months. However, they advised that for large public sector entities there are additional complexities such as:

- *negotiating satisfactory changes to existing contractual arrangements prior to expiry of the initial contract base term of 3 years (3 year period from 1 July 2014 with 2 additional 1 year options);*

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347 Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 53
348 Mr Essery, Department of Housing and Public Works, Public Briefing Transcript 10 April 2015: 5
349 Mr Essery, Department of Housing and Public Works, Public Briefing Transcript 10 April 2015: 3
350 Plumbers Union Queensland, Submission 18: 2
351 Master Plumbers' Association of Queensland, Submission 12: 3
352 Queensland Urban Utilities, Submission 15: 2

- *mobilising the necessary workforce, training, budget and other process changes without affecting business continuity; and*
- *continuing to approve and deliver standard connections (which include water meter installation) to customer within statutory timeframes as required under the South-East QLD Water (Distribution and Retail Restructuring) Act 2009 (DR Act).*[353]

The QUU also explained that the lead time would allow for them to negotiate reasonable fees with their contractor and mobilise any fee increases to their future connection customers. Therefore, they stated that a phased introduction would be of benefit as they typically increase fees and charges only once annually and must include the amended fees and charges in their Water Netserv Plan by following the process in the DR Act.[354]

11.3 Committee comments

The Committee did not reach agreement on the proposed amendments to the *Plumbing and Drainage Act 2002* and the *Water Supply (Safety and Reliability) Act 2008*.

The non-government Members argued that the examples provided by the plumber representatives were not examples specific to the installation of water meters or related to the period during which the 2014 amendments applied. They considered that one of the examples provided was a case of one person breaking the law and would not have been prevented irrespective of which provisions applied. The non-government Members considered that there was no evidence that allowing a qualified person to install water meters would be detrimental to health and safety. They considered that the 2014 amendments strengthened the requirement for those employed to fit water meters to be properly trained.

The government Members argued that even one instance of a health and safety issue arising with potable water was one too many. They considered that any action that could put at risk the health and safety of people's water supply is not worth it. The government Members also noted that evidence of non-health and safety issues were also presented to the Committee. Anecdotal evidence suggested that there may also be unreported issues, such as mud in pipes, which could inconvenience and cost consumers. They considered that these issues are less likely to arise if licensed plumbers are performing the work.

The Committee noted that installation of water meters is subject to inspection after connection.

The non-government Members noted that the LGAQ's evidence showed many areas within Queensland do not have access to licensed plumbers. They expressed the view that people located in rural and remote areas should not have significant extra costs imposed on them by the requirement to employ a plumber to undertake this work when the evidence showed that a trained installer could complete this work satisfactorily.

The government Members argued that these matters reflected a broader issue of the need for plumbers in rural and remote areas, for a range of purposes, and not just for the installation of water meters; and that this broader issue may be addressed by investing in the training of licensed plumbers rather than simply training people to fit water meters. The government Members considered that this type of training would be a good investment by local councils in these areas. The government Members also considered that those who are employed within an industry should be required to have the correct qualifications. They considered that those trained to fit water meters should be given the opportunity to undertake the appropriate training to learn other aspects of the industry to become licensed within that industry.

[353] Correspondence to FAC from the Queensland Urban Utilities, dated 14 May 2015: 1-2
[354] Correspondence to FAC from the Queensland Urban Utilities, dated 14 May 2015: 2

The non-government Members concluded that the existing provisions were appropriate, while the government Members considered that the proposed amendments were an improvement and should be enacted.

12 Examination of the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015* - Amendment of *Taxation Administration Act 2001* – clauses 75 to 83

When introducing the Bill, the Treasurer stated that the amendments to the *Taxation Administration Act 2001* are partially aligned with the amendments to the *Duties Act 2001*.[355] These amendments are to support electronic conveyancing for transfer duty in Queensland.[356]

The explanatory notes state that amendments to the *Taxation Administration Act 2001 also* provide for the payment of interest on refunds to taxpayers by the Commissioner resulting from a reassessment giving effect to the Commissioner's decision on an objection.[357] The Treasurer stated:

> *A refund resulting from any reassessment that is issued as a result of such a decision will attract interest payable by the commissioner to the taxpayer. These amendments recognise that, where a taxpayer's objection is successful, it is fair that they should be paid interest on the refund amount.*[358]

The explanatory notes outline that these amendments will align Queensland with other states and territories. The explanatory notes also stated that they will ensure consistency with existing provisions for the payment of interest on refunds arising from court or tribunal decisions and orders. Finally, a minor amendment to the *Taxation Administration Act 2001* corrects a cross-reference.[359]

The amendments to the Act as outlined in the explanatory notes are as follows:

> *Clause 76 amends the heading to part 4, division 2 – Refunds of tax and other amounts - to include a reference to particular payments to taxpayers. This takes into account the payment of section 61A interest for the division. Section 61A interest is defined in newly inserted section 38(5) as interest payable under new section 61A of the Taxation Administration Act 2001 by the Commissioner of State Revenue to the taxpayer on the whole or part of a refund amount.*
>
> *Clause 77 amends section 38 to ensure it also operates in relation to section 61A interest.*
>
> *Clause 78 amends section 39 to ensure that section also operates in relation to section 61A interest.*
>
> *Clause 79 amends section 40(1)(b) to correct a section cross-reference.*
>
> *Clause 80 inserts new section 61A. Section 61A(1) provides that the section applies if a taxpayer is entitled to a refund of tax or late payment interest, defined as the overpaid amount, because of a reassessment giving effect to a decision of the Commissioner of State Revenue under section 67(1). As part of the objection process set out in part 6, division 1, section 67(1) requires the Commissioner to allow the objection completely or partly or disallow it.*

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[355] Queensland Legislative Assembly, Hon CW Pitt MP, Treasurer, Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill Introduction, *Parliamentary Debates (Hansard)*, 27 March 2015: 235

[356] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 54

[357] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 2

[358] Queensland Legislative Assembly, Hon CW Pitt MP, Treasurer, Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill Introduction, *Parliamentary Debates (Hansard)*, 27 March 2015: 236

[359] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 2

> *Subsection (2) provides that the Commissioner of State Revenue must pay interest on the overpaid amount. Subsection (3) provides that interest is calculated daily at the prescribed rate from the date the amount to be refunded was paid to the Commissioner to the date the refund is made by the Commissioner.*
>
> *Clause 81 includes sections 480A(1) and 480A(2) of the Duties Act 2001 in section 140(5) which defines executive liability provision for section 140.*
>
> *Clause 82 inserts new part 20, section 177 to make transitional provision for the operation of section 61A. Section 61A applies in relation to a reassessment giving effect to a decision by the Commissioner of State Revenue under section 67(1) if the decision is made on or after the commencement of the Bill.*[360]

12.1 Committee comments

The Committee reiterates the comments it made in section 4 of this report

13 Compliance with *Legislative Standards Act 1992* – Fundamental Legislative Principles

Section 4 of the *Legislative Standards Act 1992* states that fundamental legislative principles (FLPs) are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The Committee examined the Bill's consistency with FLPs. This section of the report discusses potential breaches of the FLPs identified during the Committee's examination of the Bill and includes any reasons or justifications contained in the explanatory notes and provided by the department.

The explanatory notes state:

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

This report makes reference to the former Scrutiny of Legislation Committee (SLC). By way of background, two reviews conducted by the Electoral and Administrative Review Commission (EARC) in 1991 and 1992 recommended Queensland replace its then Committee of Subordinate Legislation with a Scrutiny of Legislation Committee with an expanded remit to allow it to review both primary legislation (Bills) and subordinate legislation (regulations and statutory instruments).

The *Legislative Standards Act 1992* saw FLPs enshrined into law and the Committee of Subordinate Legislation then began scrutinising subordinate legislation to ensure there had been sufficient regard given to the newly enacted FLPs.

The *Parliamentary Committees Act 1995* established a new SLC to 'examine all Bills and subordinate legislation to consider the application of FLPs to particular Bills and subordinate legislation, and the lawfulness of particular subordinate legislation'.

[360] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 54

A review of Queensland's Parliamentary committee system in 2010 led to the abolition of the dedicated SLC if favour of the current system of portfolio-based committees that have operated since mid-2011. Pursuant to section 93 of the *Parliament of Queensland Act 2001* it is now the role of each portfolio committee to consider any FLP's issues contained in Bills and subordinate legislation within its portfolio area. The Committees are assisted in this work by a dedicated secretariat which performs a very similar role to the former SLC by examining bills and subordinate legislation for FLP compliance.

The considerable body of work generated by the former SLC and its predecessor Committee regarding FLP issues remains a valuable source of information for the current portfolio committees when considering bills and sub-ordinate legislation. Similarly, the Office of Parliamentary Counsel (OQPC) frequently references the findings of the former SLC in its work *Fundamental Legislative Principles: The OQPC Notebook*, a very detailed and evolving examination of FLP issues.

13.1 Rights and liberties – Section 4(2)(a) *Legislative Standards Act 1992* – Does the Bill have sufficient regard to the rights and liberties of individuals?

Clause 19 inserts new part 15 into chapter 2 containing provisions for Electronic Lodgement Network (ELN) transfers. Division 4 of part 15 makes provision for a charge over specified land in favour of the Commissioner of State Revenue (the Commissioner) for unpaid transfer duty in certain circumstances.

Pursuant to section 156P the Commissioner may lodge a request to register a charge over a transferee's interest in land for unpaid transfer duty for ELN transfer. Section 156Q allows for the Commissioner to apply to the Supreme Court for an order to sell land should transfer duty not be paid within 18 months after registration of a charge.

Section 156S provides that the proceeds of the sale of land will be applied in the following order:

(1) Payment of the Commissioner's expenses on the application to the court for the order;

(2) Payment of the expenses incurred by the Commissioner on the sale or attempted sale;

(3) Payment of outstanding liabilities pursuant to section 42 of the *Taxation Administration Act 2001*;

(4) Payment of amounts secured by a security interest or charge on the land recorded before the filing of the charge pursuant to section 156Q(1)(a);

(5) Any balance to be applied as per the order of the court.

In accordance with these provisions the Commissioner's charge will take priority over other debts a transferee may have.

The Explanatory Notes acknowledge that the priority payment to the Commissioner in the first instance may cause concern for other mortgagees:

> *….the amendments provide that a charge securing an outstanding amount for a payment commitment will rank as a first charge over the transferee's interest in the land. This will mean that these tax debts will be paid prior to payment of debts owed to other secured creditors in relation to the transferee's interest in the land. Some mortgagees may have concerns that providing priority to the Commissioner's charge in this way will negatively impact on their securities. However, the charge is necessary to protect revenue given the required amendments to allow endorsement on the basis of payment commitment for ELN transactions.*[361]

[361] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 24

Section 4(1) of the *Legislative Standards Act 1992* (the LSA) provides that FLPs are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law.

The SLC considered the reasonableness and fairness of treatment of individuals as relevant in deciding whether legislation has sufficient regard to their rights and liberties.

The Explanatory Notes provide the following justification for clause 19:

> *Until registered, the statutory charge simply gives the Commissioner a right to priority of payment from any sale of the land. If, after the relevant ELN transfer is complete, the transferee gives security over the land to a mortgagee, who was not party to the electronic conveyance to the transferee, the Commissioner's statutory charge would have priority to that mortgage. However, the prospects of this are considered low, as:*
>
> - *The charge only arises if duty committed to be paid is not in fact paid*;
> - *Mortgagees, particularly those taking a second or subsequent mortgage, take into account a range of risks of non-payment in their lending decisions. The potential for an unregistered first charge in favour of the Commissioner already exists for unpaid landholder duty under Chapter 3 Part 1 Division 7 of the Duties Act 2001. The potential existence of a charge under the amendments will simply be another commercial factor to be taken into account in their lending decision.*[362]

The powers provided by clause 19 for the Commissioner to pursue unpaid duty are consistent with the powers provided in other acts such as the *Duties Act 2001*, the *First Home Owner Grant Act 2000* and the *Land Tax Act 2010*. For example, section 202 of the *Duties Act 2001* mirrors the provisions set out in clause 19.

Given its consistency with laws already in place and the fact it is designed to specifically deal with ELN transfers, the Committee considered that the clause is appropriate in the circumstances.

Clause 28 amends section 465 of the *Duties Act 2001* by inserting a new ground for the suspension or cancellation of a self-assessor's registration pursuant to section 465(f). The new ground arises where the self-assessor has endorsed an ELN transfer document on the basis that section 22(2A) of the *Duties Act 2001* applies to the ELN transfer and is registered under the *Land Title Act 1994*. However, should the payment amount not be paid to the Commissioner in full as required, then section 465(f) will apply.

Section 468 of the *Duties Act 2001* provides for the Commissioner to end a show cause process without further action in certain circumstances. Clause 29 inserts a new subsection (1A) to section 468. Where the new section 465(f) is the only ground for the proposed action stated in the show cause notice and if the Commissioner is reasonably satisfied that the reason the commitment amount was not paid in full was beyond the self-assessor's control, then the Commissioner may end the show cause process without further action. The clause provides the following example of a circumstance which may be beyond the self-assessor's control:

> *The commitment amount was not paid because an ELN system occurrence prevented the ELN distributing funds for duty, assessed interest or penalty tax.*

Clause 29 provides that the Commissioner must be 'reasonably satisfied' that the reason a commitment amount is not paid is beyond the self-assessor's control and the clause provides an example to this effect.

[362] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 24-25

However, the explanatory notes acknowledge that 'As the ELN system is an entirely new system, the circumstances in which non-payment of duty included in a payment commitment may occur cannot be fully anticipated at this time'.[363] Therefore, a situation may occur where the non-payment of duty by a self-assessor is due to circumstances beyond their control and they are duly penalised and asked to show cause.

The clause may therefore be a potential breach of section 4(2)(a) of the *Legislative Standards Act 1992* (the LSA) which requires legislation to have sufficient regard to the rights and liberties of individuals.

The former SLC considered the reasonableness and fairness of treatment of individuals as relevant in deciding whether legislation has sufficient regard to their rights and liberties.

The ELN system is new and circumstances may arise where it is beyond the control of the self-assessor to pay duty. However, the Committee is satisfied that pursuant to new section 468(1A)(b) the Commissioner can end a show cause notice for non-payment if the Commissioner is 'reasonably satisfied' that the self-assessor has acted appropriately and circumstances are beyond their control.

Notwithstanding the example provided at clause 29 and the powers provided to the Commissioner, the Committee sought additional advice from the department about whether there have been any further examples provided by stakeholders where payment under the new ELN system could be problematic for a self-assessor. The department advised:

> *As electronic conveyancing for any transactions liable to transfer duty has not yet commenced in Queensland, as stated in the Explanatory Notes its operation, and therefore OSR and stakeholder's capacity to anticipate examples of when payment may not occur, is limited. OSR is not aware of further specific examples.*
>
> *OSR notes no submissions were lodged in relation to these provisions, and reiterates the reasons why these provisions are considered to have sufficient regard to fundamental legislative principles, outlined at pages 23 to 24 of the Explanatory Notes.*[364]

13.2 Rights and liberties – Section 4(3)(g) *Legislative Standards Act 1992* – Does the Bill adversely affect rights and liberties, or impose obligations retrospectively?

Section 4(3)(g) of the *Legislative Standards Act 1992* (the LSA) provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

Clause 15, section 84J(2) provides that the dutiable value of a farm-in agreement is the consideration paid or payable to the farmor, or a related person of the farmor, for the farmor entering into the agreement, other than an exploration amount.

Clause 43 inserts new sections 655, 657, 658 and 659 into the *Duties Act 2001*, which provide for the retrospective operation of the new Part 8A of Chapter 2. Specifically, the new part applies to farm-in agreements made from 10:30am on 13 January 2012 (being the retrospective date).

Clause 655 specifies that the retrospective period is from 10:30am on 13 January 2012. It also provides that the 'ruling' referred to in Part 20 is ruling (DA000.12.1) made by the Commissioner in relation to the transfer duty exemption for farm-in transactions in the resource sector. A copy of the ruling is contained in Appendix D of this report.

Paragraph 6 of the ruling provides that transfer duty will not apply to a farm-in agreement where the only consideration for the agreement is an exploration amount (defined at clause 15, 84B(1)(b)).

[363] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*:23
[364] Correspondence to FAC from Queensland Treasury dated 15 May 2015: 11

Clause 658 sets out provisions in relation to upfront farm-in agreements for the retrospective period. Clause 659 provides transitional provisions in relation to liability for transfer duty which arises between 10.30am on 13 January 2012 and the commencement of the Bill. This occurs for transfer duty which arises and was assessed during the retrospectivity period for a dutiable transaction that was a farm-in agreement or a transfer of an interest in an exploration authority under a farm-in agreement.

Section 660 applies to a dutiable transaction that is an application to register or transfer a vehicle in the name of a charitable institution. The provision will apply retrospectively for applications to register or transfer a vehicle made by a charitable institution on or after 25 February 2014. It also applies retrospectively for applications to register or transfer a vehicle made by a charitable institution on or after 26 February 2013 provided that the period that the vehicle is used for a qualifying exempt purpose has not ended before 25 February 2014.

At the committee's public hearing the department confirmed the provisions were retrospective and commented as follows:

> *It also amends the Duties Act to give retrospective legislative effect to a number of taxpayer beneficial administrative arrangements as follows: it provides a transfer duty concession for resource sector farm-in agreements that will apply from 10.30 am on 13 January 2012, which was when resource sector interests and resource sector tenements became dutiable; it corrects the operation of a transfer duty exemption for the transfer of land to the state for a public purpose under the Acquisition of Land Act for a community purpose and the Land Act so that it applies to statutory vestings and will apply from 25 February 2014; and it extends the vehicle registration duty exemption for charitable institutions by reducing the use period for a qualifying exempt purpose from 12 months to nine months, and this will apply from 25 February 2014.*[365]

Clause 61 inserts new section 82 into the *First Home Owner Grant Act 2000* which gives retrospective effect to section 15(5) in relation to an approval or exemption given by the Commissioner on or after 4 July 2013. The Explanatory Notes advise that 'the amendment is beneficial to taxpayers and is in accordance with an administrative arrangement which has applied since that date and which has been published as a Public Ruling'.[366]

Clauses 43 and 61 both act retrospectively. Section 4(3)(g) of the *Legislative Standards Act 1992* (the LSA) provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

However, section 34 of the *Statutory Instruments Act 1992* allows an instrument to expressly provide for beneficial retrospectivity, that is, retrospectivity that does not decrease a person's rights or impose liabilities on a person other than the State, a State authority or a local government.

[365] Ms Elizabeth Goli, Public Briefing Transcript 10 April 2015: 2
[366] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*: 26

The Committee sought comment from Queensland Treasury on the retrospectivity issues. They advised:

> *As noted in earlier Departmental responses to Committee submissions, drafting revenue legislation is a different exercise to the production of a Public Ruling setting out an administrative arrangement pending legislation. Whereas a Ruling sits as a standalone document explaining the concepts of the concession, the legislative amendments must be made to fit the existing framework and words of the Duties Act 2001 and reflect the drafting Office of Parliamentary Counsel's drafting style for legislation. On this basis, legislative amendments can rarely be a mirror image of a Ruling, particularly where significant adjustments are made to the liability framework, as for the farm-in concession.*
>
> *OSR's view is that the farm-in concession amendments fully reflect the intended outcomes and policy in the Ruling and as the Ruling has also been administered consistently with the proposed amendments, their retrospective operation concurrent to the operation of the Ruling does not raise any fundamental legislative principle issues.*
>
> *If changes were now made to the model it would raise questions of which model should be legislated and from what date(s), given parties have been operating under the existing model. Impacts of any changes, especially if a redesign of the model is required, are not known and may result in parties who have relied on the terms and administration of the Ruling being negatively impacted. In this context, and given that not all industry bodies have made submissions to the Committee, OSR considers that any changes to the amendments may in fact raise fundamental legislative principles issues, and would require a further round of full industry consultation.*
>
> *For completeness, OSR confirms that there are no fundamental legislative principle issues arising from the amendments which do not relate to the farm-in concession.*[367]

13.3 Committee comments

In light of the benefits to the community provided by the retrospective provisions in clause 43 & 61 the Committee considered them appropriate in the circumstances.

[367] Correspondence to FAC from Queensland Treasury dated 15 May 2015: 11

13.4 Proposed new or amended offence provisions

The following table details the proposed new or amended offence provisions:

Clause	Offence	Proposed maximum penalty
31	New s480A(1) A self-assessor registered under chapter 12, part 2 or 3 must not endorse an ELN transfer document for an ELN transfer under section 455A on the basis that section 22(2) applies to the ELN transfer unless the duty amount for the relevant transfer agreement has been— (a) if the self-assessor is registered under chapter 12, part 2—paid to the Commissioner; or (b) if the self-assessor is registered under chapter 12, part 3—paid to the Commissioner or received by the self-assessor	200 penalty units
	New s480A(2) A self-assessor registered under chapter 12, part 2 or 3 must not endorse an ELN transfer document for an ELN transfer under section 455A on the basis that section 22(2A) applies to the ELN transfer unless a payment commitment has been made for the relevant transfer agreement.	200 penalty units
32	Replacement s481(1) A person must not make any notation or endorsement on an instrument or ELN transfer document indicating or implying duty has been paid for the instrument or ELN transfer document unless the person is authorised to do so under this Act.	200 penalty units
37	New s487A(2) Until the ELN transfer document is registered under the *Land Title Act 1994*, a person must not use the endorsed ELN transfer document for a purpose other than the completion of the ELN transfer.	200 penalty units

The Committee noted that there are two new offence provisions are introduced by clauses 31 and 37 by way of sections 480 and 487A. Both offences incur a penalty of 200 penalty units. Section 480A will replicate the exiting offences under section 480 of the *Duties Act 2001* creating an offence where a self-assessor endorses an ELN transfer document in particular circumstances, while new section 487A makes it an offence for a person to use an ELN transfer document endorsed on the basis of a payment commitment other than for completion of the ELN transfer.

The Explanatory Notes provide the following comment in relation to the offence provisions:

> *The extension of the existing offences to cover the ELN settlement process will ensure the same offence provisions apply in relation to both current conveyancing practice and electronic conveyancing. This will ensure equity is maintained regardless of the conveyancing method adopted. Where offences are prosecuted, as is currently the case, a person charged has the opportunity to defend the charge. Existing rights of review will continue to apply.*[368]

13.5 Committee comments

Given the nature of the offences and the justification provided in the Explanatory Notes, the Committee considered the offence provisions to be appropriate in the circumstances.

[368] Explanatory Notes, *Payroll Tax Rebate, Revenue and Other Legislation Amendment Bill 2015*:23

13.6 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendices

Appendix A – List of Submissions

Sub #	Submitters
1	Master Builders Queensland
2	Total GLNG Australia
3	National Retailers Association
4	Queensland Resources Council
5	Queensland Water Directorate
6	Mount Isa Mines Limited
7	All Trades Queensland
8	Chamber of Commerce and Industry Queensland
9	Hintercoast Plumbing and Gas
10	Local Government Association of Queensland
11	Association of Mining and Exploration Companies
12	Master Plumbers’ Association Queensland
13	Master Builders Queensland
14	Queensland Resources Council
15	Queensland Urban Utilities
16	Incitec Pivot Limited
17	Queensland Law Society
18	Plumbers Union Queensland

Appendix B – Officers appearing on behalf of the departments at public departmental briefing – Friday 10 April 2015

Witnesses
Mr Boyd Backhouse, General Counsel, Legal Services, Department of Housing and Public Works
Mr Bradley Bick, Director, Work and Electrical Safety Policy, Office of Fair and Safe Work Queensland
Mr Mike Essery, Manager, Building Codes Queensland, Department of Housing and Public Works
Mr Paul Goldsborough, Senior Director, Policy & Workers' Compensation Services, Office of Fair and Safe Work Queensland
Ms Elizabeth Goli, Commissioner of State Revenue, Office of State Revenue, Queensland Treasury
Ms Melinda Kross, Director, Policy and Legislation, Office of State Revenue, Queensland Treasury
Mr Glenn Miller, Director, Fiscal Strategy Division, Fiscal Group, Queensland Treasury
Mr Lachlan Smith, Deputy Chief of Staff, Office of the Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships
Mr Peter Vance, Principal Policy Officer, Water Supply Policy, Department of Energy and Water Supply
Mr Lawrie Wade, Manager, Environmental Policy and Legislation, Department of Environment and Heritage Protection
Mr Paul Walsh, General Manager, Water Supply Policy, Department of Energy and Water Supply

Appendix C – Witnesses appearing at public hearing – Wednesday 6 May 2015 (10.30 to 11.30am)

Witnesses
Mr Andrew Barger, Director Economic and Infrastructure Policy, Queensland Resources Council
Mr Paul Bidwell, Deputy Executive Director, Master Builders Queensland
Mr Stephen Bird, General Counsel, Total GLNG Australia
Ms Kellie Boyes, Policy Adviser, Chamber of Commerce and Industry
Ms Julia Connelly, Policy Solicitor, Queensland Law Society
Mr Michael Fitzgerald, President, Queensland Law Society
Mr Bernie Hogan, Regional Manager – Eastern States and Northern Territory, Association of Mining and Exploration Companies
Ms Dyan Johnson, Manager – Policy and Economics, Master Builders Queensland
Mr Marc Johnston, Revenue Committee, Queensland Law Society
Ms Suzanne Lawless, Senior Policy Advisor, Chamber of Commerce and Industry
Mr Steven Paterson, Revenue Committee, Queensland Law Society
Mr Neil Sutherland, General Manager Business Development and Strategy, Total GLNG Australia

Witnesses appearing at public hearing – Wednesday 6 May 2015 (11.45am to 12.45pm)

Witnesses
Mr Andrew Barger, Director Economic and Infrastructure Policy, Queensland Resources Council
Mr Paul Belz, Acting Chief Executive Director, Queensland Urban Utilities
Ms Julia Connelly, Policy Solicitor, Queensland Law Society
Ms Penny Cornah, Executive Director, Master Plumbers Association of Queensland
Mr Michael Fitzgerald, President, Queensland Law Society
Mr Greg Hoffman, General Manager – Advocacy, Local Government Association of Queensland
Mr Martin Klapper, Queensland Law Society
Mr Ernie Kretschmer, Technical Services Manager, Master Plumbers Association of Queensland
Mr Brad O’Carroll, State Secretary, Plumbers Union Queensland
Ms Elizabeth Palmer-Bright, Workforce Development Officer, Plumbers Union Queensland
Ms Kylie Prideaux, Senior Solicitor, Queensland Urban Utilities
Ms Simone Talbot, Manager Advocacy (Infrastructure, Economics & Regional Development), LGAQ

Appendix D – Public Ruling Duties Act DA000.12.1: Transfer Duty – Exemption for farm-in transactions in the resources sector

Queensland Government

Public Ruling

DA000.12.1

Contents

Public Ruling
Duties Act:

TRANSFER DUTY—EXEMPTION FOR FARM-IN TRANSACTIONS IN THE RESOURCES SECTOR

A Public Ruling, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a Public Ruling, the change in the law overrides the Public Ruling—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.

What this Ruling is about

1. Under the *Duties Act 2001* (Duties Act), duty applies to the direct and indirect transfer of mining tenements and certain petroleum authorities.

2. Dealings in relation to an exploration authority were previously exempt from duty. The *Fiscal Repair Amendment Act 2012* implemented the announcement in the State Budget 2012–13 that duty will apply to the direct and indirect transfer of an exploration authority from the start time.

3. The Budget also announced that exploration and development expenditure occurring under a farm-in agreement will be exempt from duty.

4. Pending amendment of the Duties Act, the exemption will be administered under an administrative arrangement in the terms set out in this Public Ruling.

Ruling and explanation

Definitions

5. The following terms are used in this Public Ruling.

(a) *Commissioner* means the Commissioner of State Revenue.

(b) *Deferred farm-in agreement* means an agreement between the farmor and another person (*the farmee*) which provides the farmee, after expending the exploration amount specified in the agreement, with a right to acquire an interest in the exploration authority that is:

(i) specified in the agreement; and

(ii) to be held jointly with the farmor.

(c) *Exploration amount* means an amount specified in a farm-in agreement to be expended after the agreement is made on either or both exploration and development of the exploration authority to be carried out after the agreement is made and within the period of time specified in the agreement.

(d) *Exploration authority* means:

(i) an exploration permit or prospecting permit under the *Mineral Resources Act 1989*;

(ii) an authority to prospect under the *Petroleum Act 1923* or the *Petroleum and Gas (Production and Safety) Act 2004*;

(iii) a geothermal exploration permit under the *Geothermal Energy Act 2010*; and

(iv) a GHG exploration permit under the *Greenhouse Gas Storage Act 2009*.

(e) A *farm-in agreement* means:

(i) a deferred farm-in agreement; and

(ii) an upfront farm-in agreement.

(f) *Farmor* means the person who is the registered holder of an exploration authority or a person who has lodged with the Department of Natural Resources and Mines an application to be a registered holder of an exploration authority that has been approved.

(g) *Other consideration* means any consideration paid or payable to the farmor or a related person[1] in relation to a farm-in agreement that is not an exploration amount.

(h) *Start time* means 10.30am on 13 January 2012.

(i) *Transfer event* means the exercise by a farmee of a right under an upfront farm-in agreement or otherwise to retain an interest in an exploration authority.

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[1] As defined in s.61 of the *Duties Act 2001*

(j) *Upfront farm-in agreement* means an agreement between the farmor and another person (also the farmee) which provides for the immediate transfer of an interest in the exploration authority and, subject to expending the exploration amount by the date specified in the agreement (the expenditure completion date), entitles the farmee to retain the interest in the authority that is:

(i) specified in the agreement; and

(ii) to be held jointly with the farmor.

Transfer duty exemptions

Farm-in agreement

6. Transfer duty will not apply to a farm-in agreement where the only consideration for the agreement is an exploration amount.

7. If other consideration is paid or payable in relation to a farm-in agreement, transfer duty will apply to the agreement as an agreement for transfer. However, transfer duty imposed on the agreement will be assessed initially on any other consideration paid or payable for the grant of the agreement.[2] Transfer duty on any other consideration not for the grant of the agreement will be reassessed on the agreement only at the time of any transfer or transfers under the agreement in accordance with the following paragraphs.

Transfer of an interest in an exploration authority under a farm-in agreement

Deferred farm-in agreement

8. For a transfer under a deferred farm-in agreement, transfer duty will not apply to consideration for the agreement comprising an exploration amount that has been expended in accordance with the farm-in agreement if the interest being transferred is the interest specified in the farm-in agreement.

9. Where any other consideration in relation to a transfer is paid or payable, transfer duty will be reassessed on the agreement on any other consideration for the grant of the agreement and any other consideration in relation to the transfer. A credit will apply to duty already paid on the agreement.

10. Where a transfer occurs under a deferred farm-in agreement that provides for the acquisition of interests in an exploration authority in stages, transfer duty will be reassessed on the agreement on any other consideration for the grant of the agreement, any other consideration in relation to the transfer for the relevant stage and any other consideration in relation to transfers under a previous stage. A credit will apply to duty already paid on the agreement.

[2] This is consistent with the duty treatment of options. Also, transfer duty is generally assessed on the greater of the consideration for the transaction or the unencumbered value of the property the subject of the transaction. A concessional approach is proposed for farm-in agreements as duty will be assessed by reference only to the consideration under the agreement. The value of the exploration authority will not be relevant.

Example

X enters into a deferred farm-in agreement with Y under which Y agrees to provide the following consideration:

- $10,000 to X for entering into the agreement
- $1 million on exploration activity in the authority area for the right to acquire a 20% interest in an exploration authority held by X (Transfer 1)
- On commencement of exploration activity, $200,000 to X for mining information[3] about the authority
- $300,000 to X if the 20% interest in the authority is transferred to Y
- On acquisition of the 20% interest, a further $2 million on exploration activity in the authority area for the right to acquire a further interest of 30% in the authority area (Transfer 2)
- $400,000 to X if the 30% interest in the authority is transferred to Y.

The consideration for the agreement, including the exploration amount, is $3,910,000. Transfer duty will be initially assessed on the agreement on $10,000, being the amount paid for entering into the agreement. If Transfer 1 occurs, transfer duty will be reassessed on the agreement on $510,000, being the sum of the amount paid for entering into the agreement, the amount paid for mining information and the amount paid for the transfer other than the exploration amount. A credit will apply for duty previously paid on the agreement, and the transfer will be stamped pursuant to the agreement.[4] If Transfer 2 occurs, transfer duty will be reassessed on the agreement on $910,000, being the sum of the amount paid for entering into the agreement, the amount paid for mining information and the amounts paid for Transfer 1 and Transfer 2 other than the exploration amount. A credit will apply for duty previously paid on the agreement, and the transfer will be stamped pursuant to the agreement.

Upfront farm-in agreement

11. For a transfer under an upfront farm-in agreement, transfer duty will not apply to consideration for the agreement comprising an exploration amount that is to be expended in accordance with the agreement if the interest being transferred is the interest specified in the farm-in agreement.

12. Where any other consideration in relation to a transfer is paid or payable, transfer duty will be reassessed on the agreement on any other consideration for the grant of the agreement and any other consideration in relation to the transfer. A credit will apply to duty already paid on the agreement. Liability for duty will arise on a transfer event. The farmee must lodge the agreement for assessment with the Commissioner within 14 days of the transfer event.

13. Where a farmee exercises a right under the agreement to reassign the interest to the farmor, transfer duty will not apply to the transfer from the farmee to the farmor.

[3] All consideration for a farm-in agreement will be taken into account irrespective of its nature.
[4] See s.22(2) of the *Duties Act 2001*.

Public Ruling

DA000.12.1

14. The following conditions apply where an interest in an exploration authority has been transferred to the farmee under an upfront farm-in agreement, the exploration amount has not been expended and the interest has not been reassigned to the farmor.

    (a) The farmee must notify the Commissioner within 30 days of the expenditure completion date.

    (b) The Commissioner will either:

        (i) if the farmor and farmee have extended the time within which the exploration amount is to be expended and paragraph 16 does not apply: extend the expenditure completion date to the new date agreed for expenditure of the exploration amount by the farmor and the farmee; or

        (ii) reassess duty on the agreement on the basis that the farm-in exemption did not apply.

15. Where a transfer event occurs under an upfront farm-in agreement that provides for the acquisition of interests in an exploration authority in stages, transfer duty will be reassessed on the agreement on any other consideration for the grant of the agreement, any other consideration in relation to the transfer and any other consideration in relation to transfers under a previous stage.

Arrangement to avoid duty

16. The exemptions will not apply where a farm-in agreement or transactions or arrangements under or in relation to a farm-in agreement form part of an arrangement to avoid duty.

Transitional arrangements

17. Transactions in relation to exploration authorities are only liable for duty on or after the start time. Consequently, the transfer duty exemptions for farm-in transactions will apply to the following:

    (a) A farm-in agreement made or entered into at or after the start time.

    (b) A transfer made at or after the start time under a farm-in agreement entered into at or after the start time.

    (c) A transfer made at or after the start time under a farm-in agreement entered into before the start time.

Date of effect

18. This Public Ruling takes effect from the date of issue.

David Smith
Commissioner of State Revenue
Date of issue: 27 June 2013

References

Public Ruling	Issued	Dates of effect	
		From	To
DA000.12.1	27 June 2013	27 June 2013	Current

Appendix E – Comparison table of definitions

	Current definition (in Public Ruling)	Proposed amendments in Bill	Explanation in the explanatory notes
Farmor	The person who is the registered holder of an exploration authority or a person who has lodged with the Department of Natural Resources and Mines an application to be a registered holder of an exploration authority that has been approved.[369]	**84A Who is a farmor** (1) A ***farmor*** is - (a) a person to whom an exploration authority, is granted under the relevant Act for the authority, even if the person is yet to be registered as the holder of the authority under that Act; or (b) another person to whom the exploration authority has been transferred under the relevant Act for the authority, even if the other person is yet to be registered as the holder of the authority under that Act.	Section 84A, subsection (1), provides a definition of *farmor* which covers persons to whom an exploration authority has been granted or transferred with all necessary approvals under a relevant Act for the authority. In either case, it does not matter whether the grant or transfer has been registered under the relevant Act. A person who is merely an applicant for the grant of such an interest is not covered.
Farmee	Farmee is another person in relation to an exploration authority.[370]	**84B What is an *upfront farm-in agreement*** (1) An ***upfront farm-in agreement*** is a written agreement entered into by a farmor and another person (the ***farmee***) in relation to an exploration authority, under which ….	
Farm-in agreement	A farm-in agreement means: i. a deferred farm-in agreement and ii. an upfront farm-in agreement	**84B What is an *upfront farm-in agreement*** (1) An ***upfront farm-in agreement*** is a written agreement entered into by a farmor and another person (the ***farmee***) in relation to an exploration authority, under which - (a) the farmor must make 1 or more transfers to the farmee of a stated interest in the exploration authority, each interest being less than 100% of the total interest in the authority; and (b) on the transfer of each interest, the interest is held	The provisions recognise two types of qualifying farm-in agreements - upfront farm-in agreements and deferred farm-in agreements. A qualifying upfront farm-in agreement must have a number of specified features, including the following. ▪ Each interest in the exploration authority is transferred from the farmor to the farmee conditional upon the farmee subsequently spending the exploration amount for that interest.

[369] Office of State Revenue Transfer duty – exemption for farm-in transactions in the resources sector 27 June 2013
[370] Office of State Revenue Transfer duty – exemption for farm-in transactions in the resources sector 27 June 2013

		by the farmee subject to the farmee spending a stated amount (an ***exploration amount***) on relevant exploration or development - (i) after the agreement is entered into; and (ii) on or before the expenditure completion date for the amount; and (c) the farmee must, if the obligation under the agreement mentioned in paragraph (b) is not complied with for the interest transferred, transfer the interest back to the farmor. (2) However, if the farm-in agreement is a 100% transfer farm-in agreement, the last interest in the exploration authority to be transferred under the agreement need not be held by the farmee subject to an obligation mentioned in subsection (1)(b). **84C What is a *deferred farm-in agreement*** (1) A ***deferred farm-in agreement*** is a written agreement entered into by a farmor and another person (the ***farmee***) in relation to an exploration authority, under which - (a) the farmee is entitled to 1 or more transfers from the farmor of a stated interest in the exploration authority, each interest being less than 100% of the total interest in the authority; and (b) the entitlement to each transfer arises only if the farmee spends a stated amount (an ***exploration amount***) on relevant exploration or development - (i) after the agreement is entered into; and (ii) on or before the expenditure completion date for the amount.	▪ The whole of each exploration amount must be spent after the agreement is entered into. ▪ Each interest transferred must be less than 100%. ▪ The farmee must spend each exploration amount by a specified day (expenditure completion date) in order to retain the relevant interest in the exploration authority. ▪ If the farmee does not spend the exploration amount by the expenditure completion date, the farmee must transfer the relevant interest back to the farmor. A qualifying deferred farm-in agreement must have a number of specified features, including the following. ▪ Each interest in the exploration authority is required to be transferred from the farmor to the farmee only once the farmee has spent the exploration amount for that interest. ▪ The whole of each exploration amount must be spent after the agreement is entered into. ▪ Each interest transferred must be less than 100%. ▪ The farmee must spend each exploration amount by a specified day (expenditure completion date). Under either type of agreement, there may be multiple interests

		(2) However, if the farm-in agreement is a 100% transfer farm-in agreement, the last interest in the exploration authority to be transferred under the agreement need not be subject to an obligation mentioned in subsection (1)(b).	transferred (for upfront) or transferrable (for deferred) in the specified exploration authority. However, for simplicity of administration, all transfers under an agreement must meet the qualifying criteria for a single type of farm-in agreement. Hybrid agreements which have some transfers with payment of the exploration amount as a pre-condition and others as a condition subsequent, will not qualify for the concession.