Revenue Legislation Amendment Bill 2023

Explanatory Notes

Short title

The short title of the Bill is the Revenue Legislation Amendment Bill 2023 (the Bill).

Policy objectives and the reasons for them

The Bill amends legislation administered by the Commissioner of State Revenue (Commissioner) to implement revenue measures announced in the 2023-24 State Budget, and to make other necessary amendments to revenue legislation.

The *Land Tax Act 2010* (Land Tax Act), the *Land Tax Regulation 2021* (Land Tax Regulation) and the *Duties Act 2001* (Duties Act) are amended to implement the 2023-24 State Budget measure to provide land tax and additional foreign acquirer duty concessions in relation to eligible build to rent developments that include affordable housing at a discounted rent, being:

- a 50 per cent reduction in the taxable value of land for land tax for land used for an eligible build to rent development, for up to 20 years;
- a 100 per cent reduction in the taxable value of land for land tax foreign surcharge for land used for an eligible build to rent development, for up to 20 years; and
- a 100 per cent discount on any additional foreign acquirer duty for land for an eligible build to rent development.

The Land Tax Act is also amended to remove the requirement for a land owner to apply for a land tax exemption in relation to property used as a home, where the Commissioner has sufficient information to verify eligibility.

The *Payroll Tax Act 1971* (Payroll Tax Act) is amended to:

- implement a 2023-24 State Budget measure to extend the 1 per cent payroll tax rate discount for regional employers for a further 7 years, until 30 June 2030;
- implement a 2023-24 State Budget measure to extend the 50 per cent rebate for wages paid or payable to apprentices and trainees to include wages paid or payable during the financial year ending on 30 June 2024; and
- incorporate into the Payroll Tax Act transitional provisions currently contained in the *Payroll Tax (Transitional) Regulation 2022* (Transitional Regulation) that will expire on 1 January 2024, in relation to a change to the payroll tax deduction phase out rate during the 2022-23 financial year.

The *Taxation Administration Act 2001* (Administration Act) is amended to clarify the operation of the refund provisions, to ensure that the code established by the Administration Act together with particular provisions contained in the revenue laws, continues to be the only way entitlements to refunds of amounts paid under a tax law may arise, as intended.

Achievement of policy objectives

Land Tax Act, Duties Act and Land Tax Regulation – Concessions for eligible build to rent developments

The Land Tax Act imposes land tax on the taxable value of taxable land each financial year. Land tax is calculated by applying the applicable general rate of land tax to the total taxable value of the taxpayer's taxable land. A 2 per cent surcharge rate applies to foreign companies, trustees of foreign trusts and absentees, in addition to the general rate.

The Land Tax Act will be amended to provide a concession to reduce the taxable value of land used solely or primarily for an eligible build to rent development by 50 per cent for the calculation of land tax at the general rate, and 100 per cent for the surcharge rate of land tax.

The land tax concessions will be available from the 2024-25 land tax year and for 20 years from the date the concessions first apply to the land or until 30 June 2050 (whichever comes sooner). Eligibility for the land tax concessions must be maintained continuously. The concessions will apply once a development becomes operational. That is it will not be available during construction. To qualify, developments must become operational after 1 July 2023 and before 30 June 2030, and meet the eligibility requirements by the end of the second full financial year after becoming operational. The timing for when a development becomes operational will be based on when the certificate of occupancy for the development issues.

An eligible build to rent development must meet certain requirements relating to timing as well as building features and use. In particular, at least 10 per cent of the number of dwellings in the development must be rented at least 25 per cent below the rent for comparable dwellings in the development and to an eligible tenant for the 12 months prior to the relevant 30 June.

Criteria related to establishing tenants eligible for discounted rents include an income test and an asset test. Those tests are tied to appropriate third party publications by the Australian Bureau of Statistics (for the income test) and the Department of Social Services (for the assets test). Given the extended duration of the build to rent relief (20 years or until 30 June 2050, whichever comes sooner), these tests will be included in the Land Tax Regulation. This ensures that if the third party reference tests for these criteria change over that extended duration, they can be updated as required to ensure the continued effective operation of the build to rent relief.

The Duties Act imposes a duty surcharge (additional foreign acquirer duty) on transactions that are liable for transfer duty (amongst other things), where a foreign person acquires certain residential land in Queensland. Additional foreign acquirer duty is imposed at a flat rate of 7 per cent of the dutiable value of the transaction.

The Duties Act will be amended to provide a concession to reduce the dutiable value of a foreign acquirer's interest in land for development of, or land containing, an eligible build to rent development by 100 per cent for the purposes of calculating additional foreign acquirer duty for the relevant transaction.

The concession will be available for transfers of, or agreements to transfer, land entered into on or after 1 July 2023. To ensure relief is appropriately targeted, the concession will be subject to conditions. In particular, an acquirer will need to maintain eligibility for the build to rent

land tax concessions each year, for at least 5 years continuously, to be able to retain the additional foreign acquirer concession.

A number of administration-related amendments are required to support the build to rent tax concessions and ensure they are appropriately administered. For example, owners will be required to apply for the build to rent concessions in the approved form, which is generally consistent with existing exemptions and concessions. While eligibility for the land tax concessions will be tested at 30 June each year, owners will not have to reapply each year if the concessions applied for the previous financial year and the land continues to be used for an eligible build to rent development. However, an owner will need to declare each year that the land continues to be used for an eligible build to rent development and provide sufficient information to confirm their eligibility.

Land Tax Act – removal of requirement to apply for land tax home exemption

The Land Tax Act imposes land tax each financial year on all non-exempt freehold land owned in Queensland as at midnight on the preceding 30 June. A land owner becomes liable for land tax in respect of a financial year when the total taxable value of their freehold land, excluding exempt land, as at the relevant 30 June exceeds the relevant threshold ($600,000, in the case of an individual).

Subject to conditions:

- land is exempt from land tax for a financial year if used as the home of an individual (if owned by the individual) or all beneficiaries of a trust (if owned by the trustee of the trust); and
- land is partially exempt from land tax for a financial year where it is used both as a home and for another purpose such as a home-based business (although certain non-home uses of the land, such as a work from home arrangement and certain letting arrangements, will not prevent a full exemption being available).

Currently, the Land Tax Act requires an application to be lodged by a land owner for the first financial year in which such an exemption (the home exemption) is sought for particular land. An application is not required in respect of subsequent financial years if the person's circumstances have not changed.

To simplify land tax administration for land owners, the requirement for a land owner to apply for the home exemption in relation to particular land will be removed where, on the basis of information available to the Commissioner, the Commissioner believes that the exemption applies to the whole or part of the land. Where the Commissioner cannot form this belief on available information, the land owner can continue to access the home exemption by completing an application.

A number of supporting amendments to the Land Tax Act are required to support the change in approach from a home exemption only being granted upon application by a land owner, to a model where the home exemption may be applied without any involvement from the land owner.

Where a land owner has no land tax liability for a financial year because particular land is subject to the home exemption, the Commissioner currently does not make a nil assessment. To support the continuation of this practice, the Land Tax Act is amended to expressly authorise

the Commissioner to issue a notice to a land owner setting out the basis on which the Commissioner has determined the land owner's liability for a financial year, including specifying that the whole or part of particular land has been treated as exempt land on a particular basis (e.g. on account of the home exemption).

As an integrity measure, the Land Tax Act is amended to impose a new obligation on a land owner to notify the Commissioner in certain circumstances if the land owner becomes aware that the Commissioner has incorrectly considered that the land owner was eligible for an exemption on a particular basis, or if there is any other error with the Commissioner's determination of the land owner's affairs. This recognises that the information available to the Commissioner may potentially not disclose the land owner's full circumstances (e.g. temporary absences from the land). Failure to comply with this obligation within the specified timeframe:

- will be an offence under an existing Administration Act provision (failure to comply with a lodgement requirement), unless the land owner has a reasonable excuse for non-compliance; and
- if an assessment of the land owner's land tax liability has not previously been made for the financial year, will allow the Commissioner to make an assessment or default assessment of such liability with unpaid tax interest (UTI) (and penalty tax, in the case of a default assessment) being imposed (subject to remission) in addition to land tax.

This obligation will not apply where an assessment notice has been issued to the land owner and the land owner becomes aware that its land tax liability has been underassessed, as notification in those circumstances is already required by the Administration Act. In such a case, UTI and penalty tax will be imposed (subject to remission) on a reassessment to correct the liability.

In addition, the existing obligation in the Land Tax Act for a land owner to notify the Commissioner where previously exempt land ceases to be exempt is expanded to require notification where the percentage of the land that is exempt changes between financial years.

For consistency between land owners, these supporting amendments will apply to any land owner for whom an exemption has been applied and later found to be incorrect.

Payroll Tax Act – extension of payroll tax regional rate discount

The Payroll Tax Act imposes payroll tax on taxable wages paid or payable by an employer or group of employers in a financial year once the payroll tax exemption threshold (currently $1.3 million) is exceeded. The standard rates of payroll tax are:

- 4.75 per cent for employers or groups of employers who pay $6.5 million or less annually in Australian taxable wages; and
- 4.95 per cent for employers or groups of employers who pay more than $6.5 million annually in Australian taxable wages.

A 1 per cent discount on the above rates is available for eligible regional employers (regional rate discount). The regional rate discount applies to the return periods occurring in the financial years ending 30 June 2020, 2021, 2022 and 2023 for employers whose principal place of employment is in regional Queensland and who pay at least 85 per cent of taxable wages to regional employees.

The Payroll Tax Act will be amended to extend availability of the regional rate discount to return periods occurring in the financial years ending 30 June 2024, 2025, 2026, 2027, 2028, 2029 and 2030.

Payroll Tax Act – extension of payroll tax rebate for apprentice and trainee wages

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

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

The Payroll Tax Act will be amended to extend availability of the 50 per cent apprentice and trainee rebate to wages paid or payable during the financial year ending 30 June 2024.

Payroll Tax Act – preservation of transitional arrangements for deduction phase out rate change

The *Revenue Legislation Amendment Act 2022* (RLA Act), amongst other things, amended the Payroll Tax Act to implement a 2022-23 State Budget measure to beneficially change the payroll tax deduction phase out rate from 1 January 2023. The previous payroll tax deduction phase out rate of $1 for every $4 of taxable wages above the $1.3 million threshold was changed to $1 for every $7 above the threshold.

As the change to the deduction phase out rate commenced part way through the 2022-23 financial year, the RLA Act amended the Payroll Tax Act to enable a transitional regulation to be made to prescribe how the change would operate taking into account its commencement on 1 January 2023. The *Payroll Tax (Transitional) Regulation 2022* (Transitional Regulation) was subsequently made to provide the transitional framework.

The Transitional Regulation will expire on 1 January 2024, as will the empowering Payroll Tax Act provision. In accordance with the *Acts Interpretation Act 1954*, the transitional framework will continue to have effect despite the repeal of the Transitional Regulation. However, after 1 January 2024, it will not be apparent from the Payroll Tax Act itself how liability is to be calculated for the 2022-23 financial year, nor that there were ever special rules about those issues in the Transitional Regulation.

To provide certainty for employers about how payroll tax is calculated for the 2022-23 financial year and support the ongoing administration of payroll tax, it is considered necessary for the transitional framework to remain visible and easily accessible following repeal of the Transitional Framework.

The Payroll Tax Act will therefore be amended to replicate the transitional framework.

Administration Act – clarification of refund provisions

The Administration Act contains general provisions about the administration and enforcement of revenue laws in Queensland, including the Duties Act, the Payroll Tax Act, the Land Tax Act, the *Betting Tax Act 2018* and provisions in the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* to the extent that they relate to royalty.

While the Administration Act provides a general administrative framework for all revenue laws, administrative provisions may also be included in the revenue laws themselves as necessary to address matters specific to that revenue line. The Administration Act and each revenue law are to be read together as a single Act to provide a complete legislative framework for that particular revenue line.

Amongst its provisions, the Administration Act contains provisions relating to refunds of tax and other amounts. In particular, it provides that an entitlement to a refund of an amount paid, or purportedly paid, under a tax law (being a revenue law or the Administration Act) only arises under part 4, division 2 of the Administration Act. It sets out the circumstances where an entitlement to a refund may occur and the conditions and timeframes for making those refunds. Certain revenue laws also contain particular provisions which provide taxpayers with an entitlement to a refund under that law.

It is the longstanding position that the provisions in part 4, division 2 of the Administration Act, together with particular provisions contained in the revenue laws, provide a code for refunds. That is, refunds of amounts paid under a tax law were not intended to be available under common law remedies, but only available under those provisions.

The Administration Act will be amended to clarify the operation of the refund provisions, to ensure that the code established by the Administration Act together with particular provisions contained in the revenue laws, continues to be the only way entitlements to refunds of amounts paid under a tax law may arise.

Any common law right, remedy or cause of action for a refund will be extinguished, except where a taxpayer has already exercised their rights to pursue a refund by starting a legal proceeding involving that common law cause of action, right or remedy. In this case, it is considered appropriate that the proceeding be allowed to be continued and determined in accordance with the law before commencement of the amendment. In all other cases, common law rights to pursue a refund will be precluded to ensure the intended operation of the refund provisions is achieved to the greatest extent possible, without impacting any current legal proceedings before the judiciary.

Alternative ways of achieving policy objectives

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

Estimated cost for government implementation

For all amendments in the Bill other than those in relation to the land tax home exemption measure, all implementation costs are expected to be met from within existing budget allocations.

In relation to the amendments to the Land Tax Act in relation to the land tax home exemption measure, funding is being provided to implement and operationalise the amendments, with some costs being met within existing allocations. These costs include integrating necessary data to support implementation and IT systems changes.

Consistency with fundamental legislative principles

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

Land Tax Act and Duties Act – concessions for eligible build to rent developments – making rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and not affecting rights and liberties, or imposing obligations, retrospectively (Legislative Standards Act 1992, sections 4(3)(a) and (g))

The amendments to the Land Tax Act and Duties Act to implement the build to rent (BTR) concessions may give rise to FLP issues relating to whether the relevant provisions have sufficient regard to the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992* (Legislative Standards Act). It is anticipated that the practical impact of the amendments on individuals will be minimal. While the BTR concessions will technically be available to individuals, it is not generally expected that land the subject of a BTR development will be owned by individuals. Therefore, it is expected that the relief will, in most circumstances, be claimed by non-individuals (that is, corporations and trustees of trusts).

To the extent that the amendments may affect the rights and liberties of individuals, these issues are considered below.

<u>Offences for failure to notify</u>

The amendments to the Land Tax Act and Duties Act will require owners to notify the Commissioner in particular circumstances or where certain events occur (for example, upon a change of ownership of land used for an eligible BTR development, or if an owner's intended use of the land changes).

Failure by a person to comply with a notification obligation without reasonable excuse will fall within the existing 'failure to comply with information or lodgement requirement' offence in section 121 of the Administration Act (which has a maximum penalty of 100 penalty units). This is consistent with the consequences of failing to comply with existing notification obligations under the Land Tax Act, the Duties Act and the Administration Act.

The new obligations will require owners to notify the Commissioner in circumstances where they no longer meet the relevant eligibility requirements for the concessions (for example, an eligible BTR development is not built on the land) or their circumstances have changed (for example, intent is no longer to undertake a staged development), to enable reconsideration of eligibility for the concessions on this basis. This is necessary to ensure the concessions only apply where the relevant eligibiltiy requirements have been satisfied and to protect the integrity of the concession framework and public revenue. As the Commissioner would assess based on the information available at a particular time, it is integral to administration of the concessions that owners are required to provide information to the Commissioner to enable their eligibilty for the concessions to be correctly determined, and that appropriate sanctions are in place to disincentivise non-compliance. Owners will have one month after the relevant circumstance or event occurs to comply with the notification obligation and will not commit an offence where there is a reasonable excuse for a failure to comply within that time.

The offence provisions of the Administration Act are well-established, having been in place for a number of years and they apply consistently across Queensland's revenue laws. They are considered to have sufficient regard to FLPs.

Offence for failure to keep records

The amendments to the Land Tax Act and Duties Act will require a taxpayer whose land tax or additional foreign acquirer duty liability is assessed on the basis that a BTR concession applies to keep records of particular matters to evidence eligibility for the concession (either at a particular point in time or on an ongoing basis). However, neither Act specifies the precise records that the Commissioner considers are necessary to demonstrate such eligibility.

Section 114 of the Administration Act requires a taxpayer to keep records necessary to enable their tax law liability to be ascertained, with failure to do so being an offence with a maximum penalty of 100 penalty units.

The particular records to be kept by a particular taxpayer will depend on a range of factors, some of which may be specific to the particular eligible BTR development in respect of which the BTR concessions are claimed. It is therefore neither possible nor appropriate for the Land Tax Act or Duties Act to exhaustively prescribe the records that a taxpayer will be required to keep to evidence eligibility for a BTR concession. Consistent with the Commissioner's approach to the administration of the Land Tax Act and Duties Act more generally, there are a number of ways by which the Commissioner may provide guidance to taxpayers in relation to their tax law obligations where considered necessary or desirable, such as the Commissioner's public rulings program or the Queensland Revenue Office website.

Further, prescribing an exhaustive list of records to be maintained has the potential to risk public revenue if a taxpayer keeps only the prescribed records but the Commissioner ultimately considers that additional records were necessary to establish eligibility due to the circumstances in a particular case which may not have been able to be anticipated when the list of records was prescribed.

New anti-avoidance provisions

The proposed amendments will include new anti-avoidance provisions to deter taxpayers from entering into an arrangement to circumvent the requirements affecting eligibility or entitlement for the BTR concessions. If the Commissioner is satisfied that such an arrangement exists, the Commissioner will be able to make a reassessment to remove the benefit of the BTR concession. Further, the existing provisions in the Administration Act relating to the imposition of UTI and penalty tax upon the making of a reassessment will apply.

The anti-avoidance provisions are essential to ensure the integrity of the revenue base, which is particularly necessary as the BTR concessions provide generous tax relief.

Where the Commissioner decides there is an arrangement to circumvent the requirements affecting eligibility or entitlement, and subsequently makes a reassessment on the basis that the BTR concessions do not apply, the reassessment will be subject to the existing review framework under the Administration Act. That is, a taxpayer who is dissatisfied with their assessment (including a reassessment) is able to object to the assessment, including decisions leading up to and forming part of the assessment. For a reassessment, the right of objection is limited to the changes for the particular matters for which the reassessment is made. Further, if a taxpayer is dissatisfied with the decision on their objection, they have the right to appeal to the Supreme Court or apply to the Queensland Civil and Administrative Appeal Tribunal (QCAT) for a review.

Non-application of five year limitation period

Under the Administration Act, the timeframe for making a reassessment increasing or decreasing a liability for tax is generally five years after the assessment notice for the original assessment was given to the taxpayer. The five year limitation period provides certainty for taxpayers in relation to their tax law liability and provides certainty of revenue to the State.

The amendments will remove the five year limitation period under the Administration Act for reassessments to remove the benefit of the BTR concession in certain limited circumstances. This may be perceived as affecting the rights of individuals impacted.

Queensland's tax laws already recognise that there are certain circumstances in which it is necessary and appropriate to make reassessments outside the limitation period. For example, the Duties Act, Land Tax Act and Administration Act permit reassessments to be made after the limitation period where, for example, a farm-in agreement is part of an arrangement to avoid the imposition of transfer duty (section 84P of the Duties Act), a person would not have been liable for land tax had a scheme not been entered into or carried out by another person (section 69 of the Land Tax Act) and the Commissioner reasonably believes there has been a deliberate tax default (section 22 of the Administration Act). Having regard to the length of time involved in constructing a BTR development, that eligibility is subject to operating an eligible BTR development on an ongoing basis and the potential 20-year eligibility period for tax concessions, removing the five year limitation period for certain types of reassessments is considered necessary and appropriate.

The amendments will only allow reassessments outside the limitation period in very specific circumstances, including where a taxpayer has received BTR concessions under the Land Tax Act and there has been deliberate tax default. In circumstances where there has been fraud or

evasion of tax, or a taxpayer or their agent knowingly misleads the Commissioner about a taxpayer's tax liability, it is considered appropriate for the Commissioner to have the power to make a reassessment outside the limitation period to preserve the integrity of the concession framework and the revenue system as a whole. Reassessments outside the limitation period would also be allowed where a taxpayer has received a BTR concession under the Duties Act and does not meet the relevant eligibility requirements (for example, does not build an eligible BTR development on the land or does not maintain eligibility for the requisite period of time).

Having regard to the potential length of the time between when the concessions are applied (which may be as early as when the land acquisition for the eligible BTR development is assessed with duty), and when the relevant eligibility requirements would be able to be satisfied (which may be after the eligible BTR development has been constructed and the taxpayer is able to show that it has qualified for the BTR land tax concessions each year, for five years continuously), it is considered appropriate to reassess outside the limitation period. Specifically, it ensures that the concessions are only available where the relevant eligibility requirements are satisfied, and it also protects the integrity of concession framework and public revenue. Further, to provide certainty for taxpayers, non-application of the limitation period will be limited to the specific circumstances described above, and for any reassessments made outside the limitation period, taxpayers will still be able to seek review of the assessment (and any decisions) via the review framework in the Administration Act, in relation to the changes made by the reassessment.

Continuous eligibility requirement

The amendments require eligibility for the BTR land tax concessions to be maintained on a continuous basis. If continuity of eligibility is severed, the taxpayer will not be eligible for the BTR land tax concessions for that particular BTR development again. Further, where the land for the BTR development is transferred to a new owner, the new owner will generally be precluded from accessing the BTR land tax concessions on the basis that eligibility has not been continuously maintained prior to sale. This outcome may affect the rights and liberties of individuals.

Eligible BTR developments are expected to provide long-term, stable and secure housing for Queenslanders, including housing at a discounted rent. Continuity of eligibility precludes taxpayers from coming in and out of the concession framework as they desire. For example, it would not be appropriate for a taxpayer to provide housing at a discounted rent in some years, but not others, and be able to access the BTR land tax concessions for any periods they do. In the case of new owners, having regard to the nature and value of a BTR development, the nature of the parties to these types of transactions, and the high likelihood of the parties having access to professional advice, it is expected that a new owner would generally have visibility of how the development was run prior to sale, including whether it had been operated as an eligible BTR development, through normal commercial due diligence processes.

However, where a new owner has taken all appropriate and reasonable steps to determine whether the land is eligible for the BTR land tax concessions, but has not identified, even after taking these steps, information indicating the ineligibility of the BTR development (for example, due to a misrepresentation by the previous owner), the new owner will not be precluded from claiming the BTR concessions solely because eligibility has not been maintained for a continuous period. In this instance, the new owner would need to demonstrate

that they have been complying with the legislative requirements since owning the land, thereby mitigating the effect of the continuous eligibility requirement.

It is considered that the continuous eligibility requirement is necessary to ensure the intent of the BTR concessions is achieved. The limited exception for new owners provides an appropriate balance between ensuring the concessions apply as intended and protecting public revenue, and enabling individuals who have done everything reasonably necessary to be eligible for the concessions to access this relief.

Transitional regulation

The amendments to the Land Tax Act and the Duties Act to support the BTR concessions provide for the making of transitional regulations (transitional regulation making power) to ensure the effective transition from the operation of the relevant Act as in force before its amendment to the operation of the Act as in force from such amendment. A transitional regulation may operate retrospectively from as early as the day the transitional regulation making power commences. Further, any transitional regulation and the power to make these regulations will expire 1 year after the transitional regulation making power commences.

In implementing the BTR concessions, situations may be identified whether further transitional or savings provisions are required other than those contained in the Land Tax Act or the Duties Act (as amended by the Bill).

A transitional regulation containing these specific provisions may need to operate retrospectively to ensure the BTR concessions apply appropriately from commencement. However, any transitional regulation will ultimately be to facilitate the implementation of the BTR concessions, which are taxpayer beneficial.

For the reasons outlined above, it is considered that the amendments are consistent with FLPs, to the extent that they touch upon the rights and liberties of individuals.

Land Tax Act – removal of requirement to apply for land tax home exemption – making rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; consistency with principles of natural justice; and not adversely affecting rights and liberties, or imposing obligations, retrospectively (Legislative Standards Act, sections 4(3)(a), (b) and (g))

Section 4(2)(a) of the Legislative Standards Act requires that legislation has sufficient regard to the rights and liberties of individuals.

Section 4(3) of the Legislative Standards Act provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, amongst other things, the legislation:

(a) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (section 4(3)(a));

(b) is consistent with the principles of natural justice (section 4(3)(b)); and

(c) does not adversely affect rights and liberties, or impose obligations, retrospectively (section 4(3)(g)).

Decision on eligibility for home exemption without land owner involvement

Currently, the Land Tax Act requires an application to be lodged by a land owner for the first financial year in whichthe home exemption is sought for particular land. It is reasonable to assume that a land owner who was not factually entitled the home exemption in respect of particular land because of a failure to meet the eligibility requirements would not lodge an application form. In such a case, the Commissioner would (correctly) determine the land owner's liability for land tax for a financial year on the basis that the relevant land was not exempt from land tax on the basis of the home exemption.

The amendments to the Land Tax Act to remove the requirement to lodge an application in particular circumstances would potentially allow the Commissioner to determine the land owner's land tax liability for a financial year on the basis that particular land is exempt land on account of the home exemption, without any positive action on the part of the land owner. There is therefore the potential for the Commissioner's determination to be incorrect (e.g. factually, the land owner did not meet the eligibility requirements for the home exemption due to factors not known to the Commissioner).

If the land owner becomes aware of such error (whether through an assessment notice or other notice issued by the Commissioner, or otherwise), the land owner is required to notify the Commissioner within 30 days of becoming so aware. The land owner's timely compliance with that requirement will be relevant to the amount of UTI and penalty tax ultimately payable under the Administration Act on an assessment, default assessment or reassessment made to correct the error. For example, where an assessment has not previously been made, timely notification will mean that no UTI or penalty tax will be payable on an assessment that removes the benefit of the erroneous home exemption.

Consistent with the Commissioner's existing practices, the Commissioner will take into account a range of factors when considering the extent to which any such UTI or penalty tax will be remitted under section 60 of the Administration Act, including the circumstances giving rise to the underpayment of land tax and the timeliness of any action taken by the land owner to notify the Commissioner of the error. Further, the land owner will have a right to object to any UTI or penalty tax that is not remitted (subject to existing Administration Act provisions), and a right to appeal to the Supreme Court or apply to QCAT for a review if dissatisfied with a decision on objection.

It is therefore considered that these aspects of the amendments have sufficient regard to the rights and liberties of individuals.

Offences for failure to notify

Failure by a person to comply with a new or expanded notification obligation without reasonable excuse will fall within the existing 'failure to give notice' or 'failure to comply with information or lodgement requirement' offences in sections 120 and 121 of the Administration Act (which have a maximum penalty of 100 penalty units). This is consistent with the consequences of failing to comply with existing notification obligations under the Land Tax Act and the Administration Act.

The nature of the land tax assessment framework (i.e. the land owner is not required to lodge a return each financial year, detailing the land owner's land holdings and the use of each parcel of land) means that the Commissioner must determine a land owner's land tax liability for a financial year on the basis of information available to the Commissioner at a particular time. It is therefore critical to land tax administration that land owners be required to provide relevant information to the Commissioner (e.g. when the use of a particular property to which an exemption applies changes), and that appropriate sanctions are in place to disincentivise non-compliance. In the case of the new and expanded notification obligations, the land owner will be given a period of at least 30 days after the relevant event to comply, and as noted, will not commit an offence where there is a reasonable excuse for a failure to comply within that time.

As noted above, the offence provisions of the Administration Act are well-established, having been in place for a number of years and they apply consistently across Queensland's revenue laws. They are considered to have sufficient regard to FLPs.

It is therefore considered that these aspects of the amendments have sufficient regard to the rights and liberties of individuals.

Retrospectivity

Currently, the Administration Act requires a land owner to whom an assessment notice is issued to notify the Commissioner within 30 days of becoming aware that the land owner's correct land tax liability for the relevant financial year is greater than the amount reflected in the assessment notice (the underassessment notification requirement).

The Land Tax Act is amended to require the land owner to notify the Commissioner if the land owner becomes aware that the Commissioner has incorrectly considered that the land owner was eligible for an exemption on a particular basis, or if there is any other error with the Commissioner's determination of the land owner's affairs, and the underassessment notification requirement does not apply.

Under transitional provisions, this notification obligation will also apply in certain circumstances where a land owner becomes aware after commencement that its land tax liability for a financial year up to and including the 2022-23 financial year was determined on an incorrect basis and the underassessment notification requirement did not apply. Failure to so notify is an offence under the Administration Act.

This new obligation to notify will not apply if the land owner became aware of the incorrect determination prior to commencement, so an offence can only be committed where the land owner becomes aware after commencement and fails to notify the Commissioner as required. That is, these aspects of the amendments do not operate retrospectively (in the sense of making previous action or inaction by the land owner an offence), so are not considered to be inconsistent with FLPs.

***Taxation Administration Act 2001 – clarification of refund provisions – not adversely affecting rights and liberties, or imposing obligations, retrospectively* (*Legislative Standards Act 1992*, section 4(3)(g))**

The proposed amendments to the Administration Act to clarify the operation of the refund provisions, to ensure they are the only way entitlements to refunds of amounts paid under a tax law may arise, raise a potential FLP issue. The FLP issue relates to whether the relevant provisions adversely affect rights retrospectively. This is because the proposed amendments will remove any common law right, remedy or cause of action for a refund where a proceeding has not been started before the amendments commence. In certain circumstances, the amendments will extinguish common law rights, remedies or causes of action which have arisen before commencement (e.g. where there was an amount that was paid on the basis of mistake of law or fact before commencement of the amendment but a restitutionary claim had not been commenced).

Whether a common law right to pursue a refund is extinguished by the proposed amendment will depend on whether a legal proceeding has been started before commencement. Where a taxpayer has not exercised their rights by starting a proceeding, any common law right to claim a refund will be precluded. However, where a taxpayer has already exercised their rights by starting a legal proceeding, it is considered appropriate that the proceeding be allowed to continue and be determined in accordance with the law before commencement of the amendment. It is the longstanding position that refunds of amounts paid under a tax law were not intended to be available under common law remedies, but only available under the refund provisions of the Administration Act and certain provisions of the revenue laws. Extinguishing common law rights to a refund only where a person has not started legal proceedings is considered necessary and appropriate to restore the intended operation of the refund provisions to the greatest extent possible, without impacting any current legal proceedings before the judiciary.

Where common law rights to seek a refund are extinguished, this does not remove all rights to challenge amounts assessed and paid under a tax law. The Administration Act establishes a comprehensive review framework to which a taxpayer may have recourse. If a taxpayer wishes to dispute a tax liability, they may do so through the objection, review and appeal framework established under part 6 of the Administration Act, which may result in a reassessment decreasing their tax liability. The Commissioner also retains a general discretion to issue a reassessment for a period of five years. Where the Commissioner makes a reassessment decreasing a liability (within five years), a taxpayer is entitled to a refund.

Further, as the refund provisions exist alongside the broader review framework established by the Administration Act, the amendments will not impact a taxpayer's ability to seek judicial review under the *Judicial Review Act 1991* to the extent already permitted by the Administration Act.

Leaving open common law rights to pursue refunds of tax may allow taxpayers to circumvent the review pathways and associated timeframes provided for under the Administration Act. Because of the clear and long-standing rules governing entitlements to a refund under the Administration Act, any amendment to clarify that an entitlement to a refund of amounts paid under a tax law only arises under the Administration Act will provide certainty to taxpayers and government in relation to the circumstances in which a refund entitlement arises, the avenues through which a refund may be sought and the timeframes within which these avenues

must be pursued. In this sense, to the extent that the proposed amendments retrospectively affect rights of taxpayers to pursue a common law remedy for a refund, they are considered justifiable and proportionate to ensure the certainty of the public revenue necessary for its continued and effective management for the benefit of all Queenslanders.

Consultation

Community consultation was not undertaken in relation to the amendments in the Bill as they are being implemented as part of the 2023-24 Budget or are technical amendments necessary to ensure the revenue legislation operates as intended or to support tax and royalty administration.

Consistency with legislation of other jurisdictions

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

Notes on provisions

Part 1 Preliminary

Clause 1 provides that the Bill, when enacted, may be cited as *Revenue Legislation Amendment Act 2023*.

Clause 2 provides for the commencement of the amendments made by the Bill. In particular, it provides that the amendments to the *Duties Act 2001*, the *Land Tax Act 2010*, the *Land Tax Regulation 2021* and the *Payroll Tax Act 1971* commence on 1 July 2023. The amendments made by the Bill to the *Taxation Administration Act 2001* will commence on assent.

Part 2 Amendment of the Duties Act 2001

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

Clause 4 inserts new chapter 4, part 4AA after current section 245A of the *Duties Act 2001.* Part 4AA provides for concessions for additional foreign acquirer duty (AFAD) for eligible BTR developments.

New division 1 of new part 4AA contains preliminary matters.

New section 245B provides for the application of part 4AA. Part 4AA applies to a relevant transaction that is the transfer or agreement for the transfer of dutiable property that is AFAD residential land, entered into on or after 1 July 2023. Part 4AA does not apply to any replacement transactions for the property for dutiable transactions entered into before 1 July 2023, options in relation to the property that were granted before 1 July 2023 or other arrangements the purpose of which was to defer the transaction so that a concession would apply.

New section 245C provides definitions for part 4AA.

New section 245D provides that a person obtains a BTR land tax concession in relation to land for a financial year, if the person's liability for land tax is assessed on the basis that a concession under section 58B of the *Land Tax Act 2010* applies, unless it is later reassessed under part 6A, division 5. A person is ineligible to obtain a BTR land tax concession in relation to land for a financial year if the person's land tax liability for that year would be assessed on the basis that a concession under section 58B does not apply in relation to the land, whether or not a liability for land tax or the time for making an assessment has arisen for that financial year.

New section 245E provides for particular references to land, acquirer and land used for an eligible BTR development in part 4AA. Land refers to land the subject of the relevant transaction and acquirer refers to the acquirer under the relevant transaction. Land used for an eligible BTR development at a particular time refers to land that is used for an eligible BTR development for the financial year during which the particular time occurs and during the period starting at midnight on 30 June immediately preceding the particular time and ending at the particular time, nothing has happened which would compromise eligibility to receive a concession under section 58B of the *Land Tax Act 2010* for the next land tax year.

New division 2 provides for AFAD concessions for land used or to be used for an eligible BTR development. Both AFAD concessions discount the dutiable value of a foreign acquirer's interest in the dutiable property by 100 per cent for the purposes of calculating AFAD for the relevant transaction.

New section 245F provides an AFAD concession for land to be used for an eligible BTR development. The concession applies where at the time liability for the relevant transaction arises, a build to rent development is not located on the land but the acquirer (who is a foreign acquirer) will construct a build to rent development on the land on or before 30 June 2030 and use the land and the build to rent development in a way that makes the acquirer eligible to obtain a BTR land tax concession in relation to the land for at least 5 consecutive financial years. The acquirer must not transfer or subdivide the land during that 5 year period.

New section 245G provides an AFAD concession for land used as an eligible BTR development. This concession applies where at the time liability for the relevant transaction arises, land is land used for an eligible BTR development and, if a staged development, each stage of the development is a completed stage. To be eligible, the transferor must have obtained a BTR land tax concession in relation to the land for the financial year before the acquisition year, the acquirer (who is a foreign acquirer) must use the land and the eligible BTR development in a way that makes the acquirer eligible to obtain a BTR land tax concession in relation to the land for at least 5 consecutive financial years. The acquirer must not transfer or subdivide the land during that 5 year period.

New division 3 of part 4AA provides for applications for concessions and rulings.

New section 245H provides that an application for the AFAD concession must be made in the approved form. An application can be made either when the instrument evidencing the relevant transaction is lodged for assessment or when the acquirer first applies under section 58S of the *Land Tax Act 2010* to have the acquirer's liability for land tax for the financial year assessed on the basis that the land is land used for an eligible BTR development.

New section 245I applies where a person proposes to be a party to a relevant transaction to which part 4AA applies and to construct a build to rent development on the land on or before 30 June 2030 and use the land and the development in the way provided for in 245F and the person has applied under section 58T of the *Land Tax Act 2010* for a ruling on whether, if the proposed development is carried out, the person's liability for land tax in relation to the land will be assessed on the basis that a concession under section 58B of that Act applies. In these circumstances, section 245I provides that a person may apply for a ruling in relation to the relevant transaction. The application must be in the approved form and supported by sufficient evidence to enable the Commissioner of State Revenue (Commissioner) to make a ruling. The Commissioner must give the applicant notice of the ruling on the application.

New section 245J provides that where a ruling given provides that a concession under 245F applies to the relevant transaction, upon application by the taxpayer under section 245H, the Commissioner must assess the relevant transaction on the basis that the concession under section 245F applies, except in certain circumstances. These circumstances include where the information given with the application for the concession differs materially from the information given with the application for the ruling, where the circumstances at the time of application for the concession are materially different from the circumstances at the time of the application for the ruling, where information given with the application for the ruling was false

or misleading or where a legislative change, judgement of a court or decision by the Queensland Civil and Administrative Appeal Tribunal (QCAT) is given after the ruling but before the application which, if it had taken effect or been given/made before the ruling, would have materially affected the ruling made by the Commissioner.

New division 4 of part 4AA provides for reassessments.

New section 245K applies if the Commissioner decides a concession for an eligible BTR development applies to a relevant transaction on the basis of an application made under section 245H(2)(b), being when the acquirer first applies under section 58S of the *Land Tax Act 2010* for a land tax concession for eligible BTR developments. Section 245K(2) provides that the Commissioner must make a reassessment of the relevant transaction on the basis that the AFAD concession is applied in relation to the transaction.

New section 245L provides for a reassessment to be made in circumstances where the Commissioner is satisfied that an acquirer under a relevant transaction has entered into an arrangement to circumvent the limitations on or requirements affecting eligibility for a concession for eligible BTR developments under division 2. The Commissioner may make a reassessment to impose AFAD on the relevant transaction, to the extent of the acquirer's interest in the dutiable property, on the basis that the acquirer was not entitled to the concession.

New section 245M provides that, where a concession is applied under section 245F for a relevant transaction involving land to be used for an eligible BTR development, the Commissioner must make a reassessment if satisfied that particular circumstances listed in section 245M(2) apply. These are circumstances of non-compliance with the relevant AFAD concession. Section 245M(3) provides that the Commissioner must make a reassessment to impose AFAD on the relevant transaction as if the concession did not apply at the time liability for transfer duty arose on the relevant transaction.

Section 245M(4) provides that, where an acquirer does not make an application under the *Land Tax Act 2010* in relation to land for the 2032-33 financial year within the period specified in section 58S(2)(b) of the *Land Tax Act 2010,* a particular circumstance of non-compliance is taken to apply.

Section 245M(5) provides for when the reassessments must be made, depending on the particular circumstances of non-compliance.

Section 245M(6) states that section 245M applies despite the limitation period in the *Taxation Administration Act 2001* for reassessments which generally requires reassessments to be made within 5 years after the assessment notice for the original assessment was given.

New section 245N provides that, where a concession is applied under section 245G for a relevant transaction involving land used for an eligible BTR development, the Commissioner must make a reassessment if satisfied that particular circumstances listed in section 245N(2) apply. These are circumstances of non-compliance with the relevant AFAD concession. Section 245N(3) provides that the Commissioner must make a reassessment to impose AFAD on the relevant transaction as if the concession did not apply at the time liability for transfer duty arose on the relevant transaction.

Section 245N(4) provides for when the reassessments must be made, depending on the particular circumstances of non-compliance.

Section 245N(5) states that section 245N applies despite the limitation period in the *Taxation Administration Act 2001* for reassessments.

New division 5 of part 4AA contains notice requirements.

New section 245O provides that division 5 applies if AFAD is not imposed on a relevant transaction because a concession for eligible BTR developments is applied under division 2.

New section 245P imposes a notification obligation on an acquirer who decides not to use the land for the purpose, or otherwise in the way, proposed when a concession for eligible BTR developments was applied. Section 245P(2) contains examples of decisions for the purposes of section 245P and includes, for example, where an acquirer decides not to construct a build to rent development on the land. Section 245P(3) provides that, within 1 month after making the decision, the acquirer must give the Commissioner notice in the approved form of the decision.

Section 245P(4) states that this notification obligation does not apply where the acquirer decides to transfer or subdivide the land, provided that, when the decision is made, the acquirer has obtained a BTR land tax concession in relation to the land for at least 5 consecutive financial years.

Section 245P(5) provides that, if an acquirer gives notice under section 245P(3) of a decision for which the acquirer is required to give notice of under section 58ZA of the *Land Tax Act 2010,* the acquirer is taken to have complied with the notification obligation under the *Land Tax Act 2010.*

New section 245Q imposes a notification obligation on an acquirer in instances where a concession is applied under section 245F for a relevant transaction involving land that is to be used for an eligible BTR development and any of the circumstances in section 245M apply requiring the Commissioner to make a reassessment. The acquirer must give the Commissioner notice in the approved form of the circumstance within 1 month after it starts to apply and ensure that the instruments required for the assessment of duty for the relevant transaction are lodged for reassessment of duty on the transaction.

New section 245R imposes a notification obligation on an acquirer in instances where a concession is applied under section 245G for a relevant transaction involving land that is used for an eligible BTR development and any of the circumstances in section 245N apply requiring the Commissioner to make a reassessment. The acquirer must give the Commissioner notice in the approved form of the circumstance within 1 month after it starts to apply and ensure that the instruments required for the assessment of duty for the relevant transaction are lodged for reassessment of duty on the transaction.

New division 6 of part 4AA provides for record-keeping requirements.

New section 245S provides that, if the Commissioner assesses a relevant transaction on the basis that a concession for eligible BTR developments applies, the acquirer must keep records to show when the acquirer satisfies certain conditions of the concession and their continued satisfaction of certain conditions.

Clause 5 amends the heading of chapter 4, part 5, which relates to reassessments of AFAD, to insert a note referring to the reassessment provisions in part 4AA, division 4 relating to concessions for eligible BTR developments.

Clause 6 omits the heading of chapter 4, part 5, division 4, subdivision 1.

Clause 7 amends section 246H which requires an acquirer under a relevant transaction on which AFAD is imposed or to which an AFAD exemption applies, to lodge an AFAD statement in the approved form. Section 246H is amended to ensure this requirement also applies to an acquirer under a relevant transaction to which the AFAD concessions for eligible BTR developments applies.

Clause 8 inserts new part 28 in chapter 17 which contains a transitional provision for the *Revenue Legislation Amendment Act 2022*. New section 680 provides a power to make a transitional regulation to make provision for matters for which the *Duties Act 2001* does not provide, or sufficiently provide, for and which are necessary to facilitate the transition to the *Duties Act 2001* as amended by the *Revenue Legislation Amendment Act 2023*, part 2. A transitional regulation may have retrospective operation from the commencement of section 680. Section 680 and any transitional regulation will expire on the day that is 1 year after section 680 commences.

Clause 9 amends the dictionary in schedule 6 to insert several new definitions relating to the AFAD concessions for eligible BTR developments under part 4AA in chapter 4.

Part 3 Amendment of the Land Tax Act 2010

Clause 10 provides that part 3 amends the *Land Tax Act 2010*.

Clause 11 amends section 32, which provides the general and surcharge rate of land tax that is applied to the taxable value of the land. A new note is inserted referring to new section 58B which provides the concessions for land used for eligible BTR developments. Where the concessions apply to land, the taxable value of the land is discounted by 50 per cent and, if the owner of the land is a foreign company or trustee of a foreign trust, the surcharge rate of land tax does not apply.

Clause 12 inserts new part 6A after section 58 which provides for eligible BTR developments.

New division 1 of part 6A contains preliminary matters. New section 58A provides definitions for part 6A.

New division 2 of part 6A provides for the concessions for land used for eligible BTR development. New section 58B applies to land that is used for an eligible BTR development for a financial year. If section 58B applies to land, the taxable value of the land must be discounted by 50 per cent. This is relevant for determining the general rate of land tax under section 32 which is ultimately used for calculating an owner's liability for land tax. If the owner of the land is a foreign company or trustee of a foreign trust, the surcharge rate of land tax (currently 2 per cent) mentioned in section 32(1)(b)(ii) does not apply.

New division 3 of part 6A provides what is land used for an eligible BTR development. New subdivision 1 provides for the main concepts.

New section 58C provides the concept of *land used for an eligible BTR development*. Section 58C(1) provides that land is land used for an eligible BTR development for a financial year if the Commissioner is satisfied of particular matters. Section 58C(1)(a) provides that, during the previous financial year, the land must have been used solely or primarily for an eligible BTR development and, where the land was owned by more than 1 owner, it must have been owned under a single ownership structure. That is, no owner was entitled to a specific part of the land that the other owners were not entitled to.

Section 58C(1)(b) provides that the requirements about maximum period for which the land may be land used for an eligible BTR development, and continuity of use, in new subdivision 2 of division 3 in part 6A must be satisfied. There are notes which cross-reference new section 58G which provides for the maximum period of use and new sections 58H to 58J which set out the requirements for continuity of use generally and in specific circumstances such as where the land is sold or subdivided after the concession is claimed.

Section 58C(2) provides for how the requirement in section 58C(1)(a) that land was used solely or primarily for an eligible BTR development, applies in relation to an eligible BTR development that is a staged development. It provides that, to the extent the land is intended to be used for a future stage of the development, it is taken to be used for the eligible BTR development.

Section 58C(3) clarifies that, to the extent land is used for an associated common area for the eligible development, the land is used for eligible BTR development. Section 58C(4) contains a definition of *associated common area.*

New section 58D provides definitions of *build to rent development* and *staged build to rent development.* Section 58D(1) provides that a *build to rent development* is 1 or more buildings that are located on the same parcel, constructed or substantially renovated for the purpose of providing multiple dwellings to be occupied under residential tenancy agreements and that first become suitable for occupation during the period starting on 1 July 2023 and ending on 30 June 2030.

If more than one building is located on the parcel, section 58D(2) provides that the specified period in section 58D(1)(c) only applies in relation to the first building that becomes suitable for occupation. If more than 1 building, or parts of buildings, on a parcel become or are intended to become suitable for occupation at different times, section 58D(3) provides that the specified period in section 58D(1)(c) only applies to the building, or part of a building, that first becomes suitable for occupation.

Section 58D(4) provides that a build to rent development mentioned in section 58D(3) is a *staged development.*

Section 58D(5) defines *substantially renovated* for section 58D(1)(b).

New section 58E provides the concept of an *eligible BTR development.* Section 58E(1) provides that a build to rent development is an eligible BTR development for a financial year if, during the previous financial year it was comprised of at least 50 dwellings that met the

requirements for dwellings generally (in part 6A, division 3, subdivision 3), satisfied the discounted rent housing requirements (in part 6A, division 3, subdivision 4) and was used solely or primarily for residential purposes. A note to section 58E(1) refers to new section 58ZC which contains special rules for how the requirements in section 58E(1) apply where the first or only building comprising a build to rent development becomes suitable for occupation before 1 January in a financial year.

Section 58E(2) provides that to be an eligible build to rent development, the requirements in section 58E(1) must be satisfied by 30 June in the financial year that ends 2 years after the end of the financial year during which the first or only building comprising the development becomes suitable for occupation. An example is provided.

Section 58E(3) provides that, for a staged development, a dwelling is only taken to be part of the development if it is in a completed stage of the development and at least 12 months have passed since the last day of the month in which the stage of the development became a completed stage. This applies for requirements in section 58E(1) and part 6A, division 3, subdivisions 3 and 4. Section 58E(4) defines a *completed stage* for section 58E.

New subdivision 2 contains the requirements about maximum period and continuity of use.

New section 58F provides that the purpose of subdivision 2 is to set out the requirements that must be met for subsection (1)(b) of section 58C which provides for what is land used for an eligible BTR development.

New section 58G provides that land may be used for an eligible BTR development for a maximum of 20 years. However, the financial year ending 30 June 2050 is the last financial year for which the land may be used for an eligible BTR development.

New section 58H provides that, where land is used for an eligible BTR development for more than 1 financial year, the use of the land for an eligible BTR development must have been continuous since the BTR start date for the development. *BTR start date* defined in section 58A. This continuity of use requirement applies regardless of any change in the ownership of the land and subject to sections 58I and 58J which provide for how it applies in particular circumstances.

New section 58I provides for how the continuity of use requirement applies in certain circumstances where a person (new owner) acquires land from a person (previous owner) who has claimed a BTR concession. The land will be taken to have been used continuously, solely or primarily for an eligible BTR development in certain circumstances. Specifically, where the new owner did not know and could not reasonably have known of certain specified circumstances and, since acquiring the land, the new owner has continuously used the land solely or primarily for an eligible BTR development but for the continuity of use requirement not being met by the previous owner.

New section 58J provides for how the continuity of use requirement applies in circumstances where a parcel of land (original parcel) that has been continuously used solely or primarily for an eligible BTR development is subdivided and there is a new parcel that, from the date the subdivision takes effect, is continuously used solely or primarily for an eligible BTR development. Where certain conditions are met, then for determining the owner's liability to land tax on the new parcel, the build to rent development for which the new parcel is used is

taken to be same build to rent development for which the original parcel was used, and the BTR start date is taken to be the BTR start date for the eligible BTR development for which the original parcel was used.

New subdivision 3 contains the requirements generally for dwellings comprising a BTR development.

New section 58K provides that the purpose of subdivision 3 is to set out the requirements that must be met for subsection (1)(a) of section 58E which provides for requirements for eligible BTR developments.

New section 58L provides that the dwellings must be self-contained.

New section 58M provides the management requirement. Section 58M(1) and (2) provides that the same entity must be responsible for providing management services for all of the dwellings in the build to rent development except for the discounted rent dwellings, which may be managed by another entity that is a registered community housing provider that manages all of the discounted rent dwellings in the build to rent development. Section 58M(3) defines a *registered community housing provider* as a national provider or State provider within the meaning of *Housing Act 2003.*

New section 58N provides that dwellings must be occupied or available for occupation under residential tenancy agreements, the terms of which must generally not restrict who may occupy the dwellings. This applies except to the extent a restriction is necessary to protect public health or safety or is related to the provision of housing to an eligible tenant under a discounted rent housing agreement. *Residential tenancy agreement* is defined in section 58A.

New subdivision 4 contains particular discounted rent housing requirements.

New section 58O provides that the purpose of subdivision 4 is to set out the discounted rent housing requirements that must be met for subsection (1)(b) of section 58E which provides for requirements for eligible BTR developments.

New section 58P provides that, during the previous financial year, at least 10 per cent of the dwellings in the build to rent development must have been discounted rent dwellings, being a dwelling which is occupied by an eligible tenant under a discounted rent housing agreement. This condition will be taken to have been satisfied where the percentage of discounted rent dwellings in the build to rent development was less than 10 per cent for no more than a total of 30 days (either consecutively or cumulatively) in the previous financial year. This will ensure that a build to rent development can still be an eligible build to rent development despite minor and temporary fluctuations in the percentage of discounted rent dwellings.

New section 58Q provides for what is an *eligible tenant*. Section 58Q(1) provides that a person is an eligible tenant if, when they enter into a residential tenancy agreement, the owner of the land on which build to rent development is located believes that certain requirements are met. That is, the owner believes that each member of the person's household is an Australian citizen or permanent resident who will each occupy the dwelling as their principal place of residence throughout the term of the residential tenancy agreement. Also, the owner believes that the limits prescribed by regulation are met in relation to the combined total value of stated assets

at a stated time and the total taxable income for a stated period of each member of the person's household and any non-resident spouse.

Section 58Q(2) defines *household, non-resident spouse* and *taxable income* for section 58Q.

New section 58R defines a *discounted rent housing agreement*. Section 58R(1) provides at a residential tenancy agreement for a dwelling in a build to rent development is a discounted rent housing agreement if the agreement is a fixed term agreement where the tenant is offered the option of an agreement with a term of 3 years, and, at each relevant time for the agreement, the rent payable is at least 25 per cent less than the reference rent for the dwelling.

Section 58R(2) provides that the reference rent for the dwelling at a relevant time is the average rent paid or payable for each other comparable dwelling in the build to rent development that is subject to a residential tenancy agreement entered into at arm's length before the relevant time that was not a discounted rent housing agreement at the relevant time for that dwelling. A dwelling is comparable having regard to the size, quality and amenities of the dwelling. There may be different categories of comparable dwellings within any build to rent development, such as both 1-bedroom/1-bathroom dwellings and 2-bedroom/2-bathroom dwellings.

Section 58R(3) provides that for working out the reference rent for a dwelling under section 58R(2), there must be at least 1 other dwelling in the build to rent development that is comparable and subject to a residential tenancy agreement that meets the requirements in section 58R(2)(b). If there are no other such dwellings, then the residential tenancy agreement is not a discounted rent housing agreement.

Section 58R(4) provides that *relevant time* for a residential tenancy agreement is when the agreement is entered into, when the renewal of the agreement takes effect and when the rent is reviewed under the agreement.

Example

An owner is entering into a lease for a dwelling proposed to be an discounted rent dwelling on 1 July 2024. The particular dwelling is 1-bedroom, 1-bathroom, so comparable dwellings would be other 1-bedroom, 1-bathroom dwellings in the build to rent development that are rented (at arm's length and not under a discounted housing agreement) on 1 July 2024 to determine the relevant reference rent. If there are 2 comparable dwellings rented at that point in time, the owner would take the average of rent paid or payable for these two dwellings at that time as the reference rent and would need to set rent at least 25 per cent below that reference rent for the proposed dwelling to qualify as discounted rent housing.

New division 4 provides for applications for concessions and rulings.

New section 58S provides that a taxpayer may apply to the Commissioner for the taxpayer's liability for land tax for a financial year to be assessed on the basis that land is land used for an eligible BTR development for the financial year. An application must be in the approved form and made within the specified time. A taxpayer need not make an application for a financial year if the taxpayer's liability for land tax for the previous financial year was assessed on the basis that the land is land used for an eligible BTR development, the ownership of the land has not changed and the land continues to be land used for an eligible BTR development for the

financial year, Also, under section 58S(4), an application need not be made for a financial year if ownership of the land changed during the previous financial year, the previous owner's liability for land tax for the previous financial year was assessed on the basis that the land was used for an eligible BTR development, the previous owner has given notice under new section 58ZB about the use of the land for the previous financial year before the change of ownership, and since the change of ownership the land has continued to be used, solely or primarily, for an eligible BTR development.

New section 58T applies where a person who owns land or proposes to acquire land, proposes to use the land for an eligible BTR development, by constructing or substantially renovating 1 or more buildings on the land. In these circumstances, that person may make an application for a ruling about whether, if the proposed development is carried out, the person's liability for land tax for a financial year will be assessed on the basis that a concession under section 58B applies in relation to the land. The application must be in the approved form and supported by sufficient evidence to enable the Commissioner to make a ruling. The Commissioner must give the applicant notice of the Commissioner's ruling on the application. Even where a person makes an application for a ruling, any application for the concession must still be made within the time specified in section 58S.

New section 58U provides that if the Commissioner has, on an application for a ruling under section 58T, decided that a taxpayer's liability for land tax for a financial year will be assessed on the basis that a concession under section 58B applies in relation to the land, upon application by the taxpayer under section 58S, the Commissioner must assess the taxpayer's liability for land tax for the financial year on the basis that the concession under section 58B applies in relation to the land, except in certain circumstances. These circumstances include where the information given with the application for the concession differs materially from the information given with the application for the ruling, where the circumstances at the time of application for the concession are materially different from the circumstances at the time of the application for the ruling, where information given with the application for the ruling was false or misleading or where a legislative change, judgement of a court or decision by QCAT occurs after the ruling but before the application which, if it had taken effect or been given/made before the ruling, would have materially affected the ruling made by the Commissioner.

New division 5 provides for reassessments.

New section 58V requires the Commissioner to make a reassessment of a taxpayer's liability for land tax for the financial year if the taxpayer has been assessed on the basis that the land is land used for an eligible BTR development for the financial year and the Commissioner is satisfied that the land is not land used for an eligible BTR development for the financial year. In this circumstance, the Commissioner must make a reassessment of the taxpayer's liability for land tax on the basis that the land is not land used for an eligible BTR development for the financial year. Section 58V(3) does not limit the Commissioner's ability to make a reassessment of the taxpayer's liability for land tax for the financial year on the basis of a deliberate tax default under the section 22(2)(a) of the *Taxation Administration Act 2001*.

New section 58W provides for the making of reassessments in certain circumstances. If a taxpayer's liability for land tax is assessed on the basis that land is land used for an eligible BTR development, and a person occupied a dwelling in the eligible BTR development at any time during the previous financial year under a discounted rent housing agreement, but the requirements under section 58Q(1)(a), (b) or (c) were not met in relation to the person when

the discounted rent housing agreement was entered into, and the discounted rent housing requirements under division 3, subdivision 4 would not have been met for the eligible BTR development for the financial year if the dwelling were not a discounted rent dwelling, the Commissioner must make a reassessment under section 58W(2) of the taxpayer's liability of tax for the financial year as if the land were not used for an eligible BTR development for the financial year. However, under section 58W(3), the Commissioner must not reassess the taxpayer's liability for land tax for a financial year if the Commissioner is satisfied that the taxpayer took all reasonable steps to ensure the requirements under section 58Q(1)(a), (b) and (c) were met in relation to the person when the discounted rent housing agreement was entered into.

New section 58X is an anti-avoidance provision which provides that where the Commissioner is satisfied that the owner of land has entered into an arrangement to circumvent limitations on, or requirements affecting, eligibility for a concession under section 58B, the Commissioner may make a reassessment of the owner's liability for land tax for a financial year on the basis that the owner is not entitled to the concession under section 58B.

New section 58Y provides for the recovery of unpaid land tax on a reassessment of a previous owner. Under part 7, unpaid land tax is debt that may be recovered from the owner of the land for the time being as a debt. Further, unpaid land tax is a first charge on the land on which the tax is imposed. However, where a taxpayer's liability for land tax for a financial year is assessed on the basis that land is land used for an eligible BTR development and, before the taxpayer acquired the land, another person's liability for a previous financial year was assessed on the basis that the land was used for an eligible BTR development and, after the taxpayer acquired the land, a reassessment is made under division 5 for the previous financial year on the basis that the land is not, or as if the land were not, land used for an eligible BTR development, section 58Y provides that the unpaid land tax imposed on the reassessment is not a charge on the land and may only be recovered as a debt from the other person.

New division 6 contains notice requirements.

New section 58Z requires the owner of land that is land used for an eligible BTR development for a financial year to give, within 1 month after the start of the financial year, the Commissioner notice in the approved form stating certain information if, under section 58S(3) or (4), the owner need not make an application under section 58S in relation to the owner's liability for land tax for the financial year.

New section 58ZA imposes a notification obligation on an owner of land used for an eligible BTR development which is a staged development in relation to particular decisions about the future use of the land used for the eligible BTR development. Where the owner of land decides to not proceed with or to change the nature of at least 1 uncompleted stage of the development, the owner of the land must notify the Commissioner of the decision in the approved form within 1 month after making the decision.

New section 58ZB imposes a notification requirement on a person ceasing to be the owner of land used for an eligible BTR development about the use of the land during the final period of ownership. The person must, within 1 month of ceasing to be the owner of that land, give the Commissioner notice in the approved form stating how the land has been used during the period starting on 1 July in the financial year the person ceases to be the owner of the land and ending on the day they ceased to be the owner of the land.

New division 7 contains other provisions.

New section 58ZC provides special rules that apply where the first or only building comprising a build to rent development first becomes suitable for occupation before 1 January in a financial year, and the owner of the land makes an application under section 58S in relation to the owner's liability for land tax for the financial year immediately following.

New section 58ZD provides that were a taxpayer's liability for land tax for a financial year is assessed on the basis that a concession under section 58B applies in relation to the land, the taxpayer must keep records that show the basis on which the land is used for an eligible BTR development for the financial year. The period for which these records must be kept is provided by section 118 of the *Taxation Administration Act 2001*.

Clause 13 amends current section 66 which details the application of part 8 of the *Land Tax Act 2010* which provides for avoidance schemes. Section 66(1) provides that part 8 applies if a person obtains or would obtain a land tax benefit from a scheme entered into or carried out for the sole or dominant purposes of enabling the person to obtain a land tax benefit from the scheme. Section 66 is amended to insert new section 66(3A). Section 66(3A) clarifies that despite section 66(1), part 8 does not apply in relation to a land tax benefit attributable to a concession under section 58B. Section 66 (3A) to (5) are renumbered as sections 66(4) to (6).

Clause 14 amends section 76, which requires an application to be lodged in order for land to be exempt land for a financial year other than in the circumstances set out in section 76(2). New section 76(3) provides that, if section 76(2) does not apply, an application also need not be lodged where the Commissioner believes on the basis of available information that the land is exempt land under section 41, or part of the land is exempt land under section 42, for the financial year, and the Commissioner has given the owner of the land notice of such belief. Such notice may be given by way of an assessment notice, a basis of liability notice issued under new section 80A, or some other notice.

Clause 15 inserts new section 77A, which requires the owner of land to give notice to the Commissioner where the extent to which land is exempt land on particular bases changes between financial years.

Section 77A(1) provides that section 77A applies where a part of land is exempt land for a particular financial year under section 42 (land used as a home), 53 (land used for the business of primary production) or 55 (certain land owned by a port authority or a wholly owned subsidiary), and without there being a change in ownership of the land, there is a change to the part of the land that is so exempt when a liability for land tax arises for the next financial year. Where the change results in no part of the land being exempt, section 77A will not apply because the owner of the land will be required to provide notice to the Commissioner under section 77 in such circumstances.

Section 77A(2) requires the owner of the land to give the Commissioner notice of the change to the part of the land that is exempt. This requirement is a lodgement requirement under the *Taxation Administration Act 2001*, and accordingly a failure to comply is an offence under section 121 of that Act.

New section 77A(3) requires such notice to be given within 1 month of the start of the next financial year.

Clause 16 replaces section 79(2)(a), to reflect that a taxpayer's address for service (as that term is used in section 79(1)) may be determined by reference to the most recent assessment notice or basis of liability notice given to the taxpayer.

Clause 17 inserts a new part 9, division 2A after section 80.

New section 80A provides that where the Commissioner is satisfied that a taxpayer's liability for land tax for a financial year is nil and has not made an assessment of such liability, the Commissioner may (but is not required to) issue a notice, called a basis of liability notice, to the taxpayer. A basis of liability notice must state that the Commissioner is satisfied that the taxpayer's liability for land tax for the financial year is nil, and the basis on which that belief has been formed. The statement of such basis must include a description of the land that the Commissioner believes is owned by the taxpayer when the liability arises, and identify any land (or part of land) that the Commissioner believes to be exempt land under part 6.

New section 80B applies in relation to a taxpayer's liability for land tax for a financial year where the Commissioner has given the taxpayer an assessment notice or a basis of liability notice for the liability, and the taxpayer becomes aware that the basis of the liability as stated in that notice was not, or is no longer correct. However, the section will not apply where the taxpayer is required to advise the Commissioner under section 28 of the *Taxation Administration Act 2001* about the incorrect basis of liability (i.e. where the correct liability for tax is more than the amount stated in the assessment).

Where section 80B applies, section 80B(2) requires the taxpayer to give notice to the Commissioner that the basis of their liability was not correct. Failure to provide this notice is an offence under section 120 of the *Taxation Administration Act 2001*.

Section 80B(3) requires such notice to be given within 30 days after the taxpayer becomes aware of the error.

Section 80B(4) provides that, for the purposes of section 80B, the basis of a taxpayer's liability means a description of the land owned by the taxpayer when the liability arises, any exemption that applies to the land or part of the land, or another matter that affects the amount of the liability.

New section 80C applies where a taxpayer who has been given a basis of liability notice in relation to their liability for land tax for a financial year is required to, but does not, comply with section 80B(2) in relation to that liability, and the Commissioner has not made an assessment of their liability within the time that compliance with that section is required.

Where section 80C applies, section 80C(2) provides that the Commissioner may make a default assessment under section 13 of the *Taxation Administration Act 2001* as if the taxpayer had not lodged a document required to be lodged under a lodgement requirement.

Section 80C(3) provides that unpaid tax interest on an assessment or default assessment made by the Commissioner for the taxpayer's liability is calculated under section 54 of the *Taxation Administration Act 2001* as if the taxpayer's non-compliance with section 80B(2) were non-compliance with a lodgement requirement for the assessment. Further, where a default assessment is made, section 58(3)(a) of the *Taxation Administration Act 2001* applies to the

calculation of penalty tax as if the reference in that section to section 20 of that Act included a reference to section 80B(2) of the *Land Tax Act 2010*.

Section 80C(4) provides that, for the purposes of section 80C, the basis of a taxpayer's liability for land tax for a financial year has the same meaning as the term has in section 80B(4).

Clause 18 inserts a new part 10, division 9 after section 101, containing transitional provisions.

New section 102 provides that section 76(3) applies in relation to a financial year ending before or after the commencement.

New section 103 provides that a basis of liability notice may be given in relation to a taxpayer's liability for land tax for a financial year ending before or after the commencement. Where such a notice is given in relation to liability for land tax for a financial ending before 1 July 2023, the taxpayer is required to comply with section 80B(2) in relation to such liability (if applicable) but section 80C will not apply where the taxpayer fails to do so.

Further, where an assessment of a taxpayer's liability for land tax for a financial year ending before 1 July 2023 is made before commencement, the taxpayer is not required to comply with section 80B(2) in relation to such liability. The intention is that the taxpayer is only required to comply with that section where the assessment of such liability is made after commencement.

New section 104 provides a power to make a transitional regulation to make provision for matters for which the *Land Tax Act 2010* does not provide, or sufficiently provide, for and which are necessary to facilitate the transition to the *Land Tax Act 2010* as amended by the *Revenue Legislation Amendment Act 2023*, part 3. A transitional regulation may have retrospective operation from the commencement of section 104. Section 104 and any transitional regulation will expire on the day that is 1 year after section 104 commences.

Clause 19 amends the dictionary in schedule 4 to insert several new definitions relating to the land tax concessions for eligible BTR developments under part 6A, and a definition of *basis of liability notice* that refers to the definition given to the term in section 80A(2).

Part 4 Amendment of the Land Tax Regulation 2021

Clause 20 provides that part 4 amends the *Land Tax Regulation 2021*.

Clause 21 inserts new sections 2A and 2B after section 2.

New section 2A provides for asset limits relating to eligible tenants for the purposes of section 58Q of the *Land Tax Act 2010*.

New section 2B provides for taxable income limits relating to eligible tenants for the purposes of section 58Q of the *Land Tax Act 2010*.

Part 5 Amendment of the Payroll Tax Act 1971

Clause 22 provides that part 5 amends the *Payroll Tax Act 1971*.

Clause 23 amends section 10A(1) to extend availability of the 1 per cent payroll tax rate discount for regional employers, to the return periods in the financial years ending 30 June 2024, 2025, 2026, 2027, 2028, 2029 and 2030.

Clause 24 amends the definition of *rebate* in section 27A(3), which provides the formula for working out the rebate for wages paid or payable to apprentices and trainees during a periodic return period in an eligible year. The amendment extends availability of the 50 per cent rebate to the 2023-24 financial year.

Clause 25 amends the definition of *rebate* in section 35A(4). For an annual payroll tax amount, section 35A(4) provides the formula for working out the rebate for wages paid or payable to apprentices and trainees during an eligible year. The amendment extends availability of the 50 per cent rebate to the 2023-24 financial year.

Clause 26 amends the definition of *rebate* in section 43A(3), which provides the formula for working out the rebate for wages paid or payable to apprentices and trainees during a final return period in an eligible year. The amendment extends availability of the 50 per cent rebate to 2023-24 financial year.

Clause 27 inserts a new part 15, division 1 heading before section 147. Part 15 provides transitional provisions for the *Revenue Legislation Amendment Act 2022*. It will be split into two divisions as the transitional framework currently contained in the *Payroll Tax (Transitional) Regulation 2022* will be replicated in part 15.

Clause 28 amends section 147(2) to clarify that the reference to the definition of *eligible year* is a reference to that definition contained in the dictionary in the schedule.

Clause 29 omits section 148, which currently provides a power to make a transitional regulation relating to the amendments made by the *Revenue Legislation Amendment Act 2022* to change the deduction phase out rate. The clause replaces section 148 with new provisions which replicate the transitional framework contained in the *Payroll Tax (Transitional) Regulation 2022*. The new provisions are explained below.

New section 148 provides that the purpose of the new part 15, division 2, is to provide for transitional arrangements for the financial year ending 30 June 2023, in relation to the amendments made by the *Revenue Legislation Amendment Act 2022* part 8, division 3. Section 148 also contains a note referring to the repealed *Payroll Tax (Transitional) Regulation 2022*, made under section 148 in force before its replacement by this Bill, when enacted.

New section 148A provides definitions for new part 15, division 2. Section 148A replicates section 4 of the *Payroll Tax (Transitional) Regulation 2022*.

New section 148B provides for how to work out the fixed periodic deduction for the 2022-23 financial year. Section 148B replicates section 5 of the *Payroll Tax (Transitional) Regulation 2022*.

New section 148C provides for how to work out the annual deduction for the 2022-23 financial year, for an employer other than the designated group employer (DGE) for a group. Section 148C replicates section 6 of the *Payroll Tax (Transitional) Regulation 2022*.

New section 148D provides for how to work out the annual deduction for the 2022-23 financial year, for the DGE for a group. Section 148D replicates section 7 of the *Payroll Tax (Transitional) Regulation 2022*.

New section 148E provides for how to work out the final deduction for the 2022-23 financial year, for an employer other than the DGE for a group. Section 148E replicates section 8 of the *Payroll Tax (Transitional) Regulation 2022*.

New section 148F provides for how to work out the final deduction for the 2022-23 financial year, for the DGE for a group. Section 148F replicates section 9 of the *Payroll Tax (Transitional) Regulation 2022*.

New section 148G provides for the additional information required for particular annual returns for the 2022-23 financial year. Section 148G replicates section 10 of the *Payroll Tax (Transitional) Regulation 2022*.

New section 148H provides for the additional information required for particular final returns for the 2022-23 financial year. Section 148H replicates section 11 of the *Payroll Tax (Transitional) Regulation 2022*.

Clause 30 amends the definition of *eligible year* in the dictionary in the schedule to include the financial year ending 30 June 2024. This amendment, along with the amendments to sections 27A(3), 35A(4) and 43A(4) explained above, extend availability of the 50 per cent rebate for wages paid or payable to apprentices and trainees to the 2023-24 financial year.

Part 6 Amendment of the Taxation Administration Act 2001

Clause 31 provides that part 6 amends the *Taxation Administration Act 2001*.

Clause 32 amends section 36, which provides that there is no entitlement to a refund of an amount paid or purportedly paid under a tax law other than under the *Taxation Administration Act 2001*, part 4, division 2. New section 36(2) confirms that no common law cause of action, right or remedy for a refund or recovery of an amount paid or purportedly paid under a tax law is available. New section 36(3) further clarifies that this does not prevent judicial review under the *Judicial Review Act 1991* to the extent permitted under the *Taxation Administration Act 2001*.

Clause 33 inserts new sections 187 and 188 which are transitional provisions for part 6.

Section 187 provides that where a proceeding involving a common law cause of action, right or remedy for a refund is started before commencement of part 6 of the *Revenue Legislation Amendment Act 2023*, it may be continued and decided as if part 6 had not been enacted.

Section 188 provides that where a proceeding involving a common law cause of action, right or remedy for a refund is not started before commencement of part 6 of the *Revenue Legislation Amendment Act 2023*, new section 36(2) extinguishes the cause of action, right or remedy and the proceeding may not be started.